

# EXAMINING THE CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM

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## ROUNDTABLE

BEFORE THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

JUNE 12, 2018

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## **ROUNDTABLE EXAMINING THE CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM**

**TUESDAY, JUNE 12, 2018**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:37 a.m., in room 106, Dirksen Senate Office Building, Hon. Ron Johnson presiding.

Present: Senators Johnson, McCaskill, Carper, Heitkamp, Peters, Hassan, and Harris.

### **OPENING STATEMENT OF CHAIRMAN JOHNSON**

Chairman JOHNSON. Good morning. This roundtable will come to order. I want to thank everybody for your thoughtful testimony and your time appearing here today.

This is an important issue. I will just consent to have my written statement entered into the record.<sup>1</sup> I do not want to spend a whole lot of time because I would rather hear from you folks. But as I have gone through the testimonies, we have gone through this reauthorization once, and I really think it was a pretty good attempt, in 2014, to take what was originally authorized in 2007, recognize some of the problems with it and address them, and there have been improvements made. I do not think there is any doubt about it.

We need to consider reauthorization for 2019. It sounds like just about everybody here is in favor of authorization. But I think there are some real serious issues we need to discuss. And without upsetting the apple cart, without making dramatic changes, anything we can do to streamline this, to take advantage of what is already happening in other agencies.

Coming from a manufacturing background, I was talking to the witnesses beforehand we extruded a very inert plastic, very environmentally friendly, and yet we still had an Material Safety Data Sheet (MSDS) book that thick. We had our local fire department come in to do very detailed inspections, seeing what kind of dangerous chemicals would certainly create a fire hazard. We have the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) doing a pretty darn good job when you take a look at the history of keeping explosives out of the hands of people that have maligned intent.

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<sup>1</sup> The prepared statement of Senator Johnson appears in the Appendix on page 37.

So as much as possible you want to take advantage of other governmental agencies. You want to design programs that are very similar, to make them as identical as possible so industry is not forced to really comply with the whims of multiple masters. So that would be certainly my goal here in any kind of reauthorization, is, again, not come up with something entirely new but take a look at the current structure, look at the improvements made from 2007 to 2014, and then moving forward for reauthorization that is due in January 2019. What can we do to further streamline this and take advantage of those other opportunities? So that is kind of what I am hoping this discussion will be about, and as we move forward over the next few months, prior to reauthorization, we can work cooperatively to achieve exactly that.

With that I will turn it over to my Ranking Member, Senator McCaskill.

#### **OPENING STATEMENT OF SENATOR MCCASKILL<sup>1</sup>**

Senator MCCASKILL. I apologize to all of you. I went to the wrong location.

Chemical Facility Anti-Terrorism Standards (CFATS) program, initially began over a decade ago when Congress authorized it in late 2006. It became operational shortly thereafter, in 2007. As it is clear from the name, the CFATS program is part of our country's counter-terrorism efforts. It is designed to secure facilities with hazardous chemicals, to reduce the possibility of those chemicals being used in a terrorist attack, as they were, for example, in the Oklahoma City bombing.

CFATS uses a risk-based approach to determine which facilities should be covered by the program. Facilities that must comply with CFATS must manufacture or store at least 1 of 322 chemicals of interest, at or above a certain quantity and concentration.

There are 18 risk-based performance standards (RBPS) that facilities must implement, from securing the perimeter to conducting background checks. However, it is up to each covered facility to determine and implement the appropriate measures that fit the unique needs of each facility. DHS does not mandate that fences be built to a certain height, for example, or that certain surveillance equipment must be used. The program is intended to be flexible and tailored to each facility.

Obviously, CFATS has had a rocky start. At one point, the program faced an extensive inspection backlog, and as I understand it, the U.S. Department of Homeland Security (DHS) struggled to review the Site Security Plans (SSPs) in a timely manner. These issues were compounded by the fact that for a period of time, CFATS was authorized on a series of short-term spending measures. That is not an ideal way to structure and manage a regulatory program. It is very difficult for businesses to comply with necessary regulations. It is even more difficult if there is not certainty and predictability.

The concern that the program would lapse or that Congress would dramatically change it prevented DHS from making long-term adjustments to develop a sustainable and fair regulatory re-

<sup>1</sup> The prepared statement of Senator McCaskill appears in the Appendix on page 38.

gime. I am told by both DHS and many in industry alike that the program has come a long way since it was reauthorized in 2014. We secured a 4-year authorization, which turned out to be a game-changer. DHS had the space it needed to make adjustments to the program and improve the experience for covered facilities.

By all accounts, CFATS is now more streamlined, user-friendly, and less cumbersome. Moreover, companies finally received the regulatory certainty and stability they needed to make lasting investments in the security of their facilities.

The current authorization expires in January 2019. I am hopeful this roundtable will help us determine what aspects are working well and where we need to make changes. Obviously, we are all interested in addressing both gaps in the regulation and further improving the program's applicability and efficiency as it relates to how easy it is for private businesses to manage.

Given the tight legislative schedule remaining, this Committee has our work cut out for us to make sure CFATS does not lapse and that we go back to the old days of nobody being certain what is going to be or when it is going to be that.

I am confident that we can get it done in a way that ensures we are keeping hazardous chemicals away from terrorists while also allowing businesses and communities to thrive.

Thank you, Mr. Chairman. I look forward to hearing from our roundtable participants.

Chairman JOHNSON. Thank you, Senator McCaskill. So we will just go from my left to right, and we will start with David Wulf, who currently serves as the Deputy Assistant Secretary for Infrastructure Protection of the National Protection and Programs Directorate (NPPD), U.S. Department of Homeland Security. Mr. Wulf.

**TESTIMONY OF DAVID WULF,<sup>1</sup> ACTING DEPUTY ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION OF THE NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. WULF. Thank you, Mr. Chairman, thank you, Ranking Member McCaskill and Members of the Committee.

I really appreciate the opportunity to be here today to provide an update on the progress of the Chemical Facility Anti-Terrorism Standards program, the progress we continue to make in fostering security at America's highest-risk chemical facilities.

When I last testified before this Committee I emphasized the importance of long-term authorization for this critical anti-terrorism program, and am very grateful for the leadership the Committee demonstrated in securing the 4-year CFATS authorization that was signed into law in December 2014.

As we now find ourselves nearly 3½ years into the authorization period, I am grateful that the Committee is again taking the lead to continue long-term authorization of CFATS, and maybe even give some thought to permanent authorization. Just a thought.

As I am sure you will hear me say once or twice today, the stability that has come along with long-term authorization has driven

<sup>1</sup>The prepared statement of Mr. Wulf appears in the Appendix on page 41.

unprecedented progress as we have worked with CFATS-covered facilities to make America's high-risk chemical infrastructure a truly hard target, with literally tens of thousands of security measures having been put into place at high-risk facilities across the country.

The stability afforded by long-term authorization has facilitated our planning and execution of important programmatic improvements while it has also afforded regulated industry stakeholders with the certainty that they deserved as they planned for and made significant investments in CFATS-related security measures.

I do also want to take this opportunity to thank the Committee for including, in the recent DHS authorization bill legislation that would transform our parent organization, the National Protection and Programs Directorate, into the Cybersecurity and Infrastructure Security Agency (CISA). This new agency would continue NPPD's mission of leading the national effort to improve critical infrastructure security, coordinating the protection of the Federal Government's networks and physical infrastructure, and helping entities across the public and private sectors to manage potential cyber risks. As the threats facing our national security grow and evolve every day, we look forward to continuing to work with this Committee to pass that critical legislation.

Turning back to CFATS, as we are all too aware, the threat of chemical terrorism remains a real and very relevant one. Around the globe, we continue to see bad actors seeking to acquire and using in attacks chemicals of the sort that trigger coverage under CFATS, and the threat stream continues to reflect that chemical facilities themselves remain an attractive target for terrorists. So I can tell you with certainty that the work we are doing in concert with our committed stakeholders across the wide variety of industries and facilities that comprise the CFATS-regulated universe is making a real difference in protecting this Nation.

And having had the opportunity to work closely with my counterparts in other countries, I can absolutely tell you that what we are doing here, in the United States, through CFATS, what you have helped us to build with your support for long-term authorization, is absolutely the envy of the world. With its 18 comprehensive risk-based performance standards and it is non-prescriptive, flexible approach, CFATS is well suited to enhancing security across the very diverse universe of high-risk chemical facilities.

So what have we been doing to make CFATS even stronger as we have enjoyed the stability of long-term authorization over the past 3½ years? Well, we have improved processes and have seen unprecedented progress in the pace of inspections and in the review and approval of facility site security plans, eliminating a backlog of security plan reviews 6 years ahead of earlier Government Accountability Office (GAO) projections. We have developed and launched an improved risk assessment methodology that effectively accounts for all relevant elements of risk and have reassessed the level of risk associated with nearly 30,000 facilities across the Nation.

We have implemented the CFATS Personal Surety Program, affording the highest tier at CFATS-covered facility, the ability to ensure that individuals with access to those facilities have been vet-



ted for terrorist ties, and we have significantly reduced burden across our stakeholder community, having built and launched a streamlined, more user-friendly suite of online tools through which facilities submit risk assessment or top-screen surveys and develop their site security plans.

So I have probably gone a minute or two long so my apologies for that, Mr. Chairman. But in closing, and just to finish on a positive note, I would like to again thank this Committee and your top-notch staff for your leadership in the CFATS reauthorization process. We are very fond of saying that chemical security is a shared commitment and not unlike the role of our industry stakeholders who have embraced and built this program in so many ways, and the role of our committed and very talented team at DHS. The role of Congress, the role of this Committee in shaping and authorizing CFATS for the long-term has been hugely important, and I am looking forward to working further with you as we drive toward reauthorization this year.

So thank you very much. I look forward to the dialog here today.

Chairman JOHNSON. Thank you, Mr. Wulf. Now, of course, everybody knows that that was just a bluff about the length of time.

Mr. WULF. Sorry about that.

Chairman JOHNSON. Our next witness is Christopher Currie. Mr. Currie currently serves as the Director of Emergency Management, National Preparedness, and Critical Infrastructure Protection, Homeland Security and Justice Team, U.S. Government Accountability Office. Mr. Currie.

**TESTIMONY OF CHRISTOPHER P. CURRIE,<sup>1</sup> DIRECTOR, HOMELAND SECURITY AND JUSTICE TEAM, U.S. GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. CURRIE. Thank you very much, Mr. Chairman, Ranking Member McCaskill. As you said, I work for GAO. We have been assessing this program for almost a decade now. After about a billion dollars in taxpayer money spent, and more by the industry on the panel, numerous GAO recommendations, and heavy—and I emphasize heavy—oversight by Congress, the CFATS program has addressed many management challenges it faced early on.

However, just fixing the past problems is not enough today. As Congress considers reauthorization there are other issues, I think, need to be discussed here. Some of these are addressed in our past work, others are addressed in our ongoing work that we will issue later this summer, and others, I think, warrant conditional attention as we move forward and continue to evaluate this program, even if it is reauthorized.

First, the purpose of security regulations is to improve security. It is critical that the program be able to measure how risks are being reduced and not just focus on outputs, like inspection numbers.

Second, the program has to evolve with new threats, like cyber and staff need and training awareness to help these facilities evolve with the threats.

<sup>1</sup>The prepared statement of Mr. Currie appears in the Appendix on page 53.

Third, first responders, as you mentioned, the fire departments and others like that, need to know what they are responding to and how to address it at these facilities. A balance must be struck between sharing information with the communities and protecting security.

Last, in such a regulated industry as this, the Federal Government should look for opportunities and efficiencies to leverage multiple regulatory programs as well.

Thank you very much, and I look forward to the discussion.

Chairman JOHNSON. Thank you, Mr. Currie.

Our next witness is Jesse LeGros. Mr. LeGros is the Acting Vice President of Infrastructure Personnel at the American Federation of Governmental Employees (AFGE) National Local 918. Mr. LeGros also serves as a CFATS chemical security inspector for the Department of Homeland Security. Mr. LeGros.

**TESTIMONY OF JESSE LEGROS, JR.,<sup>1</sup> VICE PRESIDENT,  
INFRASTRUCTURE PROTECTION, AFGE NATIONAL LOCAL #918**

Mr. LEGROS. Thank you, Chairman. I will be pretty quick on mine. I am one of the original chemical security inspectors that was detailed from Federal Protective Service (FPS) over, so I have been here through the good, the bad, the ugly, if you will. CFATS is a good regulation and it needs to be reauthorized. However, it needs to be an appropriate regulation, not a continuing one.

Having said that, the main reason for me being here is to talk about the training issues, specifically in the cyber, or the lack of the cyber training that we are getting. With cyber being such a forefront issue, it is hard for us to, as inspectors, to regulate cyber issues at a facility when we have not had any substantive training on cyber.

I give my time back to the Director so he has extra.

Chairman JOHNSON. I appreciate that.

Our next witness is Jennifer Gibson. Ms. Gibson is the Vice President of Regulatory Affairs at the National Association of Chemical Distributors (NACD). Ms. Gibson.

**TESTIMONY OF JENNIFER GIBSON,<sup>2</sup> VICE PRESIDENT, REGU-  
LATORY AFFAIRS, NATIONAL ASSOCIATION OF CHEMICAL  
DISTRIBUTORS**

Ms. GIBSON. Good morning, Mr. Chairman, Ranking Member McCaskill, and Committee Members. Thank you so much for inviting NACD to participate in this roundtable today.

NACD and our over 440 member companies are vital to the chemical supply chain, providing products to over 750,000 end users. NACD members are leaders in health, safety, security, and environmental performance through implementation of Responsible Distribution, established in 1991 as a condition of membership in a third-party-verified management practice.

While security has always been an inherent element of Responsible Distribution, after the September 11th terrorist attacks,

<sup>1</sup> The prepared statement of Mr. LeGros appears in the Appendix on page 57.

<sup>2</sup> The prepared statement of Ms. Gibson appears in the Appendix on page 61.

NACD added specific security elements to the program and we continue to enhance these requirements.

Chemical distribution is also a very highly regulated industry, as you can imagine, and that being said we are very strong supporters of the CFATS program. I will tell you why. Unlike some other agencies, DHS has taken a very collaborative approach in implementing CFATS. Rather than coming in with a find-and-fine mentality, as many agencies do, inspectors and headquarters staff alike have had very productive conversations with the industry, the regulated community, with the ultimate goal of improving security. This has led to greater efficiencies such as the development of alternative security programs, which allow facilities to really take advantage of other measures that they have in place, both regulatory and through industry programs such as Responsible Distribution.

A long-term CFATS reauthorization will provide stability for both industry and DHS. Industry has made substantial investments in CFATS and a long-term reauthorization will give companies the certainty that this will continue and those investments were worthwhile. It will also allow DHS to continue to build on the program efficiencies that they achieved following the 2014 reauthorization.

So NACD strongly supports a long-term authorization of CFATS and we look forward to our discussion today.

Chairman JOHNSON. Thank you, Ms. Gibson.

Our next witness is Randall Eppli. Mr. Randall is the President and Chief Executive Officer (CEO) of Columbus Chemical Industries (CCI), headquartered in Columbus, Wisconsin. Mr. Eppli.

**TESTIMONY OF RANDALL EPPLI,<sup>1</sup> PRESIDENT AND CEO,  
COLUMBUS CHEMICAL INDUSTRIES, INC.**

Mr. EPPLI. Good morning, Chairman Johnson, Ranking Member McCaskill, and distinguished Members of this Committee.

Columbus Chemical Industries is a chemical distributor headquartered in Columbus, Wisconsin, and as Senator Johnson indicated, we are about 20 minutes outside of Madison. I want to thank you for allowing me to participate in this important roundtable and I am pleased to provide input to the CFATS program.

CCI is a 40-year-old, family owned manufacturer and distributor of chemicals and chemical solutions for industries such as semiconductor, medical device, pharmaceutical, laboratory, and various other applications. CCI is a small business. Our 70-person team serves customers throughout North America, Europe, and Asia, from our facility in Wisconsin and our facility in Phoenix, Arizona. We have been an active member of the National Association of Chemical Distributors for 25 years.

From the beginning, DHS generally took a non-adversarial, consultative and reasonable approach in implementing the CFATS regulations. It has been our experience that the DHS staff, in both the field and at headquarters, have generally been knowledgeable, professional, and courteous. Additionally, we have appreciated that

<sup>1</sup>The prepared statement of Mr. Eppli appears in the Appendix on page 67.

DHS arranges their site visits with us in advance, unlike many other government agencies.

I believe the CFATS program has made the chemical industry and our Nation more secure. Since the program's establishment in 2007, we have invested significant capital and training resources toward enhanced security measures at our facilities. While these resources did not necessarily help us improve our business or grow our business, they were nonetheless important to ensure the security of my company, of our employees, and the community.

CCI, as a company, supports the long-term authorization of CFATS. Thank you.

Chairman JOHNSON. Thank you, Mr. Eppli.

Our next witness is William Erny. Mr. Erny currently serves as Senior Director at the American Chemistry Council (ACC).

**TESTIMONY OF WILLIAM ERNY,<sup>1</sup> SENIOR DIRECTOR,  
AMERICAN CHEMISTRY COUNCIL**

Mr. ERNY. Thank you, Chairman, Ranking Member, and other Members of the Committee.

So I am a Senior Director with America Chemistry Council and ACC represents the major chemical producers across the United States, all of which are involved in the business of chemistry. The business of chemistry is a \$760 billion enterprise and we are growing. We support roughly 800,000 jobs across the United States, good-paying, skilled, American jobs. And it is because of our role in the economy chemical security is a top priority for ACC and our members.

This year marks the 30th anniversary of ACC's Responsible Care Program. Responsible Care is the leading chemical industry stewardship program and it has become the gold standard in the industry. It is international in scope and serves as a model for regulatory programs. ACC members have invested more than \$17 billion in security under the program.

ACC also supports long-term authorization of the CFATS program. We agreed that DHS, over the past 4 years, has really made some significant strides and improvements in implementing the program, and I think this is mostly as a result of their demonstrated commitment to listen and work with the regulated community in a collaborative fashion.

And while DHS has made some significant progress, ACC would like to throw out several recommendations for additional improvement. The first is they need to improve the transparency in their DHS risk-tiering determinations. Second, we need to eliminate the requirement for terrorist screen at these lower-risk Tier 3 and 4 sites. And third, we need to establish a CFATS recognition program that provides regulatory recognition for responsible operators that go above and beyond mere regulatory compliance.

In closing, CFATS has helped make our industry and our community safer and more secure. We encourage the Committee to consider these proposed changes and to reauthorize the program. Doing so will provide the needed regulatory certainty and stability

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<sup>1</sup> The prepared statement of Mr. Erny appears in the Appendix on page 73.

for companies to make long-term investments and sound risk management decisions.

Thank you and I look forward to our future discussions.

Chairman JOHNSON. Thank you, Mr. Erny.

Our next witness is Justin Louchheim. Mr. Louchheim is the Director of Governmental Affairs at The Fertilizer Institute (TFI). Mr. Louchheim.

**TESTIMONY OF JUSTIN LOUCHHEIM,<sup>1</sup> DIRECTOR,  
GOVERNMENT AFFAIRS, THE FERTILIZER INSTITUTE**

Mr. LOUCHHEIM. Thank you. Good morning, Chairman Johnson, Ranking Member McCaskill, Members of the Committee. My name is Justin Louchheim. I work for The Fertilizer Institute. TFI represents the Nation's fertilizer industry, which includes companies that are engaged in all aspects of the fertilizer supply chain. This ranges from large production facilities to thousands of small agricultural retailers.

So in terms of how we fit into the program, Dave, down the table, is going to tell me I am wrong in a second, but DHS estimates that there is about 3,500 facilities presently subject to CFATS program. TFI estimates that this includes about 1,500 fertilizer manufacturers and agricultural retail facilities, with the retail facilities accounting for the overwhelming majority.

Retail facilities typically are generally located in rural communities, interface directly with farmers, typically employ about 5 to 10 individuals per facility. So safe and secure handling of fertilizers is top priority for The Fertilizer Institute and our members. We actively participate, sponsor numerous safety initiatives. One example is ResponsibleAg. Mr. Erny talked about stewardship programs. ResponsibleAg would be our stewardship program. This exists to enhance compliance for agricultural retailers with a variety of Federal regulations.

To date we have about 2,500 facilities registered with the ResponsibleAg program, over 1,000 facilities certified, 185 auditors have been trained, and about 2,000 audits have been completed. I am very proud of this industry stewardship program and invite you and your staff to come out and visit any time.

So regarding the CFATS program, our members support the program. We recognize its importance and we would support a multi-year reauthorization.

A couple of thought about where we could go forward. We have heard transparency talked about. That would be at the top of my list. We believe that implementation of the program will benefit from a bit more transparency between DHS and the regulated community. This includes the re-tiering process for facilities and chemicals covered under Appendix A. We think ultimately this will bolster the quality of site security plans around the country.

Information sharing. We believe facility owner-operators should retain the discretion to determine how site security plans and related information is shared. I think that is very important. And then we have heard this discussed previously, the Personal Surety Program. We do not believe this obligation to check employee

<sup>1</sup> The prepared statement of Mr. Louchheim appears in the Appendix on page 75.

records against the terrorist screening database (TSDB) should currently be expanded to facilities and risk groups at Tier 3 and 4. Just in terms of numbers, this is a huge expansion of that program. Currently you have about less than 200 in Tiers 1 and 2 facilities, your most sort of at-risk facilities. To take it to 3 and 4 would take it from that 200 to about 3,500.

So we think if we want to look at this, perhaps a study would be a step to see if this makes sense, to see how it has worked for Tiers 1 and 2 first, before we expand it a great deal. Thank you.

Chairman JOHNSON. Just a real quick question. Of your members, how many are Tier 1, 2, 3, and 4? Do you have a breakdown on that?

Mr. LOUCHHEIM. Yes.

Chairman JOHNSON. Like are all the retail stores, are they Tier 4?

Mr. LOUCHHEIM. Sure. I want to follow up in writing to make sure I am certain of this, but it would be, we are talking about 1,500 manufacturer retail facilities for the fertilizer industry at large. I would say about 1,400 of those are agricultural retailers. The bulk of those are going to be 3 and 4, those 1,400.

Chairman JOHNSON. OK. Thank you, Mr. Louchheim.

Our next witness is Linda Menendez. Ms. Menendez is the Director of Operations for Austin Powder Company, headquartered in Cleveland, Ohio. Ms. Menendez.

#### **TESTIMONY OF LINDA MENENDEZ,<sup>1</sup> DIRECTOR OF OPERATIONS, AUSTIN POWDER COMPANY**

Ms. MENENDEZ. Chairman Johnson, Ranking Member McCaskill, and Members of the Committee, on behalf of Austin Powder Company thank you for the opportunity to discuss the CFATS program and how this program can be improved.

My name is Linda Menendez. I am the Director of Operations for Austin Powder Company, a 185-year-old privately held commercial explosives manufacturer headquartered in Cleveland, Ohio. I have worked for Austin Powder for over 30 years, 10 years in the field operations.

As you are aware, commercial explosives are used today in mining, quarry, construction, pipeline trenching, avalanche prevention, and the like. Commercial explosives play a significant role in improving our quality of life. Our license to operate our sites is based on our compliance with the regulations of ATF. Not only do I represent Austin Powder Company, I also represent the boots on the ground, Austin Powder's 1,200 employees, cleared by ATF as employee possessors or responsible persons, transporting and using explosives daily. Our employees are critical contributors to our safety, security, and compliance.

It has been my experience that persons responsible to direct the management of an ATF-licensed facility rely on this orange book, 27 Code of Federal Regulation (CFR) 555, to plan their sites and comply with ATF regulations for the safe and secure storage of explosives.

My testimony today addresses the following points.

<sup>1</sup> The prepared statement of Ms. Menendez appears in the Appendix on page 80.

First, additional regulations under the CFATS program for the same products, for the same purpose has resulted in additional expense and time and money without benefit. An example of this is one of our ATF-licensed facilities, a guarded former Navy ammunition depot with bunker-type military constructed magazines, required to install additional fencing, cameras, and monitor detection devices with over a cost of \$300,000.

Second, duplicative regulation really detracts the compliance efforts of those seeking to be confident that they understand these laws.

As you reconsider the reauthorization of CFATS, I urge you to evaluate the overlapping burden placed on the explosives industry and exclude ATF federally licensed facilities from the CFATS bill. Thank you.

Chairman JOHNSON. Thank you, Ms. Menendez.

Let me just quickly ask you a question. Did you fight for that in the original authorization and the 2014 reauthorization? Did you fight to be excluded?

Ms. MENENDEZ. Yes, we did.

Chairman JOHNSON. You fought it and lost.

Ms. MENENDEZ. And lost.

Chairman JOHNSON. OK.

Our next and final witness is Debra Satkowiak?

Ms. SATKOWIAK. Yes. Good morning.

Chairman JOHNSON. Ms. Satkowiak currently serves as the President of the Institute of Makers of Explosives (IME). Ms. Satkowiak.

**TESTIMONY OF DEBRA S. SATKOWIAK,<sup>1</sup> PRESIDENT,  
INSTITUTE OF MAKERS OF EXPLOSIVES**

Ms. SATKOWIAK. Thank you. Chairman Johnson, Ranking Member McCaskill, and Members of the Committee, on behalf of the Institute of Makers of Explosives and the commercial explosives industry, thank you for the opportunity to discuss DHS CFATS and to be part of the process to improve the program.

My name is Debra Satkowiak and I am the President of IME. Our association was founded in 1913, at the request of the U.S. Government, to develop industry best practices and to promote explosive safety. To this day, we remain the safety and security association for the commercial explosives industry.

Over 5 billion pounds of explosives materials are consumed in the United States annually in the operations that Linda just recently mentioned. Explosives underpin our economy, and as Linda said, they improve and they keep us in the quality of life that we have today. IME is proud of our industry's safety and security record and we continuously work with our member company experts to improve our best practices, many of which are adopted into regulation by Federal, State, and local entities. We also work closely with those government agencies that regulate us to keep explosives out of the hands of those who would do us harm.

My testimony addresses the following points.

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<sup>1</sup> The prepared statement of Ms. Satkowiak appears in the Appendix on page 88.

First, duplicative regulations. IME members are regulated by ATF and the DHS CFATS programs for precisely the same purpose, to prevent theft and diversion of explosives. There has been no justification provided for the duplication of DHS over ATF's jurisdiction.

Second, the millions spent on CFATS compliance by IME members have not had a measurable impact on security, according to the U.S. Government data.

Third, CFATS duplicative regulations have caused conflict with other Federal regulations, leaving our members to de-conflict and clarify jurisdictional and policy interpretations.

Finally, the lack of transparency in CFATS' tiering impedes the ability of businesses to proactively plan and adapt operations.

As a solution to the duplicative regulations, IME is requesting that ATF be given the same deference as U.S. Coast Guard (USCG), the Departments of Defense (DOD) and Energy (DOE), and the Nuclear Regulatory Commission (NRC) in the CFATS statutory exemptions.

In closing, IME is not against regulation. Indeed, in the world of commercial explosives, smart regulation promotes good business. We only seek relief from redundant regulation.

Thank you once again, and I look forward to answering your questions and being a resource for the Committee.

And I do have to quickly take one moment to correct our written testimony, to adjust the hours estimated to complete a Top-Screen in accordance with the GAO's 6-hour estimate and the update to the IME member company time spent that is mentioned in our testimony to 357 hours to fill out Top-Screens for their facilities.

Chairman JOHNSON. OK. I appreciate that and we will have the staff make that correction.

Again, I am here for the duration so what I will do is turn it over to our Ranking Member for questions first. But let me, so I do not forget, I do want to commend DHS. I think it is a really positive sign the number of businesses saying that you have approached this very cooperatively. I just think that is the best way to go, whether it is Occupational Safety and Health Administration (OSHA) or Environmental Protection Agency (EPA) or, in this case, DHS with CFATS. Businesses also want a secure America, and doing it cooperatively, I think, is just going to absolutely get the best results.

So I really do appreciate hearing the fact that that is the way DHS has approached this, and I would encourage you to continue along that path.

Mr. WULF. Absolutely.

Chairman JOHNSON. With that, Senator McCaskill.

Senator MCCASKILL. Sure. Just briefly a few questions for everyone. Just raise your hand if you disagree. CFATS should be reauthorized. Anybody think it should not be? Raise your hand if you think we should not reauthorize CFATS.

OK. If you would go down the panel and give me an ideal length of time you think it should be reauthorized for.

Mr. Wulf.

Mr. WULF. We would certainly prefer a permanent reauthorization, though recognizing the progress of permanent is not in the



cards, we would be hoping for something significantly longer than the 4-years we received in 2014, so 10 years.

Senator McCASKILL. Mr. Currie.

Mr. CURRIE. All right, ma'am. From GAO's perspective, and we do not have an opinion, but I will say I can understand the benefits of having permanent reauthorization. It makes some sense for predictability and budgeting. However, I do think that the consistent reauthorizations every 4 years have brought a lot of additional oversight that have, frankly, improved the program. I think that is a big reason for the improvements.

Senator McCASKILL. Mr. LeGros.

Mr. LEGROS. I agree with the Director, permanent, and I disagree with GAO as far as the oversight, because I think, as any legislation, you can always have the governmental oversight no matter what the timeframe is on the regulation.

Senator McCASKILL. Ms. Gibson.

Ms. GIBSON. NACD would support a multi-year reauthorization, somewhere between 5 and 7 years.

Senator McCASKILL. OK. Mr. Eppli.

Mr. EPPLI. A minimum of 4 years.

Senator McCASKILL. Minimum of 4 years.

Chairman JOHNSON. What about maximum? I think it is interesting. The industry all of a sudden went from five to seven. I mean, do you also agree that reauthorization is important?

Mr. EPPLI. I do. The concern I would have is if it is permanent, is there a chance to do the kind of thing we are doing here today to re-evaluate.

Senator McCASKILL. OK.

Mr. ERNY. Yes, I would agree, and we think the oversight function here is really important. So to the extent that we can continue to have these discussions, I would say ACC would support a longer-term authorization, minimum of 4 years.

Senator McCASKILL. But what would be the longest you think would still be good without being counterproductive to oversight?

Mr. ERNY. Right. I will just be frank. I think it depends on if we can see some of the changes made to the program that we are talking about here today, to help better streamline this, remove some of the regulatory burden associated on the regulatory community.

Senator McCASKILL. OK.

Mr. ERNY. So I think it all depends.

Senator McCASKILL. OK.

Mr. LOUCHHEIM. Thank you for the question. I would say, similar to some of the other comments, 4 to 6 years. I would probably prefer if we could get to an—whatever authorization period is, that we can get to an off-election year, for when it needs to be revised.

Senator McCASKILL. They all want everything to be in an off-election year. Trust me when I say that. Ms. Menendez.

Ms. MENENDEZ. Thank you. I believe that the reauthorization should be a 4-year period, as long as duplicative regulations are removed.

Ms. SATKOWIAK. Yes, of course. Assuming that ATF-regulated facilities are exempted from the program, we would support 4-year reauthorization.

Senator MCCASKILL. OK. Is there anyone who would like to speak up and say that some of the chemicals that we are regulating here should be removed from the list? Does everyone agree that chlorine, hydrogen fluoride, and ammonia nitrate should stay on the list? Does anybody disagree with that?

[No response.]

OK. What is your analysis, Director Currie, of the facilities communication and planning with local first responders as it stands today?

Mr. CURRIE. Yes. That is something we are addressing and we will be reporting on later this summer. But what I can tell you, preliminarily, is that—I mean, the CFATS program has done a lot, when they go out and do inspections, to verify that the facilities are working with the local emergency planning community, so that is the formal mechanism.

What we are looking at, though, is do first responders—the firefighters, the policemen—do they have access to everything that is at that facility? That is our biggest concern right now, from a safety perspective. I mean, real-world incidents have shown that people have died responding to things that they were not prepared to respond to.

So we are looking at what DHS is doing, how they are working with EPA, how they are working with the States to figure out, do responders know exactly what is at that facility beforehand.

Senator MCCASKILL. For any of the actual people who have companies that are here, thinking that it is too duplicative, is there anything specifically as it relates to first responders' responsibilities and their role in this that you would like to see changed? Ms. Menendez.

Ms. MENENDEZ. Thank you. We always reach out to our local responders. We are in their remote areas. Most of our first responders are volunteers. We had one instance where one of our managers, trying to reach out to a local fire department, said the only way to get their attention is to call 911. So that is really what we are dealing with, is that you have very remote facilities with volunteer organizations that are not available to spend the time to understand what chemicals are in their back yards.

Senator MCCASKILL. Is this common among the explosives industry, that you are in remote areas?

Ms. MENENDEZ. Yes, it is.

Senator MCCASKILL. Because of the nature of what you do.

Chairman JOHNSON. That is a good thing.

Senator MCCASKILL. And that is a good thing, but it is also a big challenge for first responders. First of all, volunteer departments, in terms of the resources for training and the applicability of all of the technical knowledge that you would have to have here. That is really a challenge. I think that is something that we need to take a look at. Thank you.

Ms. SATKOWIAK. Senator, if I may add to that.

Senator MCCASKILL. Sure.

Ms. SATKOWIAK. ATF requires that we notify the first responders, the fire authority, where we have explosives storage, because it is important to us that those first responders know where our materials are. However, on the flip side, for security proposes, we

do not want the general public to know where explosives are stored. And IME, as an association, we are asking ATF to make sure that that notification to the local fire authorities is done on an annual basis, and ATF has taken up that rulemaking on our behalf.

Senator McCASKILL. OK. Thank you, Mr. Chairman.

Chairman JOHNSON. Before I go to Senator Heitkamp, you asked about ammonium nitrate. Mr. Louchheim, you made the distinction between ammonium nitrate and urea ammonium nitrate (UAN). Correct? Can you talk about the distinction and how big a difference that is, and how big a problem that is if we maintain urea ammonium nitrate under CFATS?

Mr. LOUCHHEIM. Sure. Thank you for that. So ammonium nitrate would be more in prill solid form. Urea ammonium nitrate would be a liquid. Those are the key sort of physical, how you see it, differences.

Yes, in the written testimony we sort of make some reference to some of this. So a little bit of background, I guess, is probably relevant for here. It is a little outside the scope of CFATS in some of this background here. DHS had this obligation still on the books to create a track-and-trace program for ammonium nitrate, purchase of ammonium nitrate. This is a decades-old directive from Congress. It has not yet been implemented.

Sort of along the lines of this directive they, last year, commissioned a study by the National Academy of Sciences (NAS) to more broadly explore the use of improvised explosive chemicals and make recommendations on how they should be managed in commerce.

So the NAS issued a report in late 2017. They identified 28 chemicals for further consideration by DHS. One such chemical is urea ammonium nitrate, which is a liquid form. It is a widely used fertilizer. TFI believes that this product was a little mischaracterized as in the highest-risk category in this report, and one of our reasons is it has never been used as an explosive.

And, so our focus here is we think DHS should focus its limited resources on those chemicals that have historically been used.

Chairman JOHNSON. Tell me why that is a problem, and then I want somebody to either confirm what he is saying or defend why we would continue to regulate it under CFATS. Does it essentially put retailers into Tier 1 position? Or, what is the problem here?

Mr. LOUCHHEIM. Part of the problem is, depending on what you are trying to track and trace. I guess, you could try to track and trace everything out there in the world, right? And, you can only track and trace so much.

UAN is very widely used. Ammonium nitrate is sort of a shadow of what it once was in terms of usage and consumption right now by farmers. It has a valuable environmental role, as a fertilizer for crops, but its use is not what it used to be. And so UAN, being so widely used, would be a serious challenge to implement.

Chairman JOHNSON. So you are saying urea ammonium nitrate is not a problem. It is not a dangerous chemical.

Mr. LOUCHHEIM. And it is also never been used.

Chairman JOHNSON. Does anybody want to confirm that or challenge that?

Mr. WULF. So if I could, Mr. Chairman. So urea ammonium nitrate liquid is not regulated—is not covered under CFATS right now, so I think what Justin is referring to is and he mentioned a separate framework that we were asked to put into place under the secure handling of ammonium nitrate provisions of the 2008 Appropriations Act.

And, I think this, in many ways, is a good government story. So what the law asked us to try to do was to put in place a regulatory framework specific to ammonium nitrate that would have required registration and vetting against the terrorist screening database of all purchasers and sellers of ammonium nitrate. And we worked through the rulemaking progress. We pushed out notices of proposed rulemaking (NPR), did the whole notice and comment process. But we could not arrive at a proposed final rule that, in our view, struck an appropriate balance between cost and benefits and, importantly, the burdens that would have accrued to potentially regulated industry.

So unlike CFATS, which is a facility security-focused regulatory framework, this would have been, or this would be a framework focused on commerce in ammonium nitrate, on the purchase and sale of ammonium nitrate. Our view is that in as much as ammonium nitrate is one of perhaps a dozen high-threat improvised explosive device (IED) precursor chemicals, it would not make sense to implement such a burdensome regulatory scheme for a single chemical.

So what we did, we came to Congress, we talked with our industry stakeholders, and we are looking at a fresh start here, and that is why we sponsored this National Academy of Sciences study. And so that is the document to which Justin is referring. And so their recommendation was that urea ammonium nitrate is a chemical with which we should be concerned going forward. It is probably another discussion for another day. But, we are very open to that feedback. And those are recommendations from the National Academy.

Chairman JOHNSON. So you are just trying to head something off at the pass. OK.

Mr. WULF. Yes.

Chairman JOHNSON. Senator Heitkamp. Oh, sorry about that. Senator Peters.

#### **OPENING STATEMENT OF SENATOR PETERS**

Senator PETERS. Thank you, Mr. Chairman.

A question I have is related to cybersecurity threat. Mr. Currie, you mentioned that in your comments. Mr. LeGros, you did as well. Certainly when we are talking about critical infrastructure here and potentially dangerous chemicals that are being produced, and we all have to agree that cyber is a major threat to that. I would like to have both of you talk a little bit more about that, deficiencies that currently exist, things that we may be thinking about.

Mr. Currie, if you could elaborate on your comments. My understanding is that a lot of these facilities do not have full-time folks on staff. Often it is contracted out. It may not have the kind of intensity of supervision that is necessary to make sure that these sites are secure. But if you could tell us a little bit about more of

your findings, what you think we should be doing, and then, Mr. LeGros, talk about the inspectors. You mentioned that in your testimony as well.

Mr. CURRIE. Sure. I can start. I agree with you. This is a huge concern. It is not something that we have specifically studied or drilled down into in the CFATS program, although we have been working with staff on the Committee to do some future work.

But I would just say that building cybersecurity expertise in the training is a huge challenge across all critical infrastructure sectors. It is a huge challenge at DHS in general, for them to just recruit and retain cyber professionals in their primary cyber missions, let alone getting inspectors trained. So I think you are absolutely right. This is something that we need to focus on, on this program, or else it is not going to be able to continue to evolve to address what is probably growing to be the biggest security challenge these facilities are going to face.

Senator PETERS. Mr. LeGros.

Mr. LEGROS. And I agree. Understand, I am not a cyber expert, by no means. I am more of a physical security expert. So back as far as the cyber goes, it depends on the facility. Cyber is what it is. It refers to everything in our daily lives. But on one side, as far as the CFATS go, a lot of times what we call chemical of interest (COI), has no cyber functions with it. A good example is like chlorine. A lot of facilities use chlorine to treat the water. It is basically a manual system, a standalone. They hook it up, they turn on the valve, and as the water goes by it sucks the chlorine out.

So from that standpoint, under the CFATS, it is not really a cyber issue. However, it is being made into it because now headquarters is looking at emails, the other processes that a facility does. Because a facility could have five chemicals. Four of them, or all five of them be chemicals of interest under our regulation. However, they are not tiered for those other four chemicals. They are only tiered, like in this case, for the chlorine.

So if DHS, with CFATS inspectors, are going to look more at the cyber section of it, we, the inspectors, have to have valid training, not what we have had in the past as far as training, which is basically how to fill out our inspection reports in order for it to get approved up to headquarters.

Senator PETERS. Mr. Wulf, do you want to comment, your thoughts on this matter?

Mr. WULF. Sure. Yes, I appreciate the opportunity. So cyber is certainly an important concern across the chemical sector, really across all 16 of our critical infrastructure sectors. In the chemical sector, as Jay alluded to, you see varying degrees of integration of cyber systems, with chemical processes, with facility security networks. And so, we have varying degrees of engagement on the cyber front.

All of our inspectors are equipped to engage and address our risk-based performance standard focused on cybersecurity at the facilities where we have what we call minimal integration of cyber systems, where cyber systems are basically used to run the email but are not connected to the processes involving the chemicals, they are not connected to the facility's security system, closed-circuit TV, or what have you.

We have done some advanced training for about half of our inspector cadre, equipping them to get out and inspect the more fully integrated facilities and their cyber systems and to work with facilities as they think through ways in which they can better secure those cyber systems. We have cyber subject matter experts in our headquarters office who are available to work with inspectors, who tee up the questions that should be asked, based upon their review of facility site security plans.

So cyber very much at the top of our minds, and I think in many ways CFATS is at kind of the leading edge of cybersecurity in putting into the CFATS framework 10 years ago a risk-based performance standard focused on cybersecurity. Certain we can, on the training front, always improve, and I appreciate, really, Jay's feedback on that front. We are always looking to expand and enhance our training for our really top-notch inspector cadre. So very much appreciate it.

Senator PETERS. Right.

Chairman JOHNSON. Thank you.

Mr. LEGROS. Senator, can I ask a question of the Director?

Chairman JOHNSON. Yes.

Mr. LEGROS. So when you are referring to half the inspectors being trained, are you referring to partial or significant levels of cyber?

Mr. WULF. I think when I am talking about the half I am talking about the half who have gone through the more advanced cyber training.

Mr. LEGROS. OK. The problem we are having as inspectors, or the lead inspector, when I go into our database, which is ChemSec, to schedule an inspection, because we have the three levels of cyber integration—the minimum, the partial, and the significant—as the Director said, and I put it in my notes, there are the four questions that we ask for a minimum. Do they have cyber policies, do they conduct cyber training, etc.

If I receive a facility that has a partial, when I go in there and click inspector with cyber training, the list that it gives me is the exact same list as a general inspector. I am on that list. I cannot do it. When you do a significant, it plainly states that it will be assigned by headquarters. And as I referred to in my statement, they are actually coming out with a new guidance document that it does talk about minimum, partial, and significant, and especially significant being done by a headquarters cyber subject matter expert (SME). But when you actually look at the other paragraphs under it, it says it will be determined by the branch chief for compliance, which is basically what they are doing is they are trying to push all this stuff onto us. And I understand that they say other inspectors have had training, but even the ones that I know have had training, they were not sent by headquarters. They have done it on their own time. They signed up for these classes because they have the interest on it. But as far as headquarters providing the training, they have not.

And I will be honest with you. The way our schedule is, with so many inspections, because of the stuff that is being dumped on us, we do not have the time to do this stuff. As I explained in my statement, there are weeks that go by where I have inspections on Mon-

days and Thursdays. So when I have an inspection on Tuesday, Monday I am preparing for an inspection, on Wednesday I am preparing for the inspection on Thursday, and it is a revolving door effect. And with so much being dumped on us—and I hate to use the word “dump,” but dumped on us—it is hard for the inspectors to complete the inspections in the time given, and, honestly, to be able to get the training. We do not have enough inspectors. Apparently we do not have enough people at headquarters to do what they need to do as far as the reports go.

Senator PETERS. So if I gather from your comments, when it comes to reviewing the types of cybersecurity protections at a facility, given the lack of training, given the time constraints, other things that you have mentioned, basically inspectors—it is just a box that is being checked. There is not a deep dive as to whether or not this facility is secure?

Mr. LEGROS. Well, the ones that are partial, again, it is, like I said, there are four questions but two are actually to the facility. The other two is based on our opinion. And I am not a cyber one, and it is hard for me to honestly say, are they able to thwart the ability. I do not know. A lot of times it is a conversation with the cyber person at the facility who either has a bachelor's degree, a master's degree in computer science, or some kind of certificate for cybersecurity, and that sort of thing. So my opinion is based on their opinion.

Senator PETERS. Right. So you are asked to give an opinion based on—without any training, and you have to rely on what you are being told by the facility, basically.

Mr. LEGROS. Well, the right training.

Senator PETERS. Right. OK.

Mr. LEGROS. At cyber things change daily, yearly, whatever. But we have not had the basic in-depth training on cybersecurity and cyber systems that we need. And, I am sorry, what was the other part of the question?

Senator PETERS. No, that is it. I appreciate that. Thank you.

Thank you, Mr. Chairman.

Chairman JOHNSON. I think one thing we really need to be concerned about is mission creep, and I think CFATS is meant to address a particular problem. Cyber is incredibly complex and it is changing all the time. I think it is unrealistic to think that CFATS inspectors can be cyber trained and really ought to be doing a deep dive. I think it is just kind of outside the scope of what CFATS ought to be. That is my own personal opinion.

So what I would recommend is focusing the efforts on the task at hand, prioritizing things, and kind of let the cyber issue be dealt by other people within DHS. I just do not think you can address—just because you are going in inspecting these sites, you should be addressing every possible risk that these businesses are subjected to. That is my own personal opinion. Senator Carper.

#### **OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. Mr. Chairman, a number of years ago I was fortunate enough to become Chairman of this Committee, and Tom Coburn became the Ranking Member of this Committee. There was an article in, I do not know, Washington Post, one of these papers,

that talked about the new leadership of the Committee, who was Chair and Ranking Member. They mentioned that I was going to be the new Chairman of Homeland Security, and the article went on to describe me as the Senate expert on cybersecurity. And I took the article and I showed it to my wife and I said, "Your husband is now the expert on cybersecurity in the Senate," and she said, "In the land of the blind the one-eyed man is king, and you are that one-eyed man." To your point.

What I want to do is just briefly ask, just to go down the list, and we will just start with Debra, and just give us, quickly, one thing you think you all agree on. Just one thing in the conversation here. What is one thing you all agree on?

Ms. SATKOWIAK. We all agree that protecting the security of our great nation is of absolute importance, and particularly in today's environment.

Senator CARPER. Thank you. Ms. Menendez.

Ms. MENENDEZ. I think that you will hear that theme across the board, but I do agree that we are all responsible for the security.

Senator CARPER. OK.

Mr. LOUCHHEIM. I will echo that. I will add that Mr. Wulf and his team do a great job to also forward that mission and deserve those accolades.

Senator CARPER. Mr. Wulf, are you going to sit there and take that?

Mr. WULF. I will gladly take that.

Senator CARPER. All right. Mr. Erny.

Mr. ERNY. I think we can all agree that the approach that DHS has taken over the history of their program has really made a big impact, and I think they should continue with this collaborative approach with the industry. Everybody benefits by this. We all have the same goal here, right? We want to improve security of our facilities, our operations, and the communities where we live.

Senator CARPER. Thank. Mr. Mr. Eppli.

Mr. EPPLI. I would echo that the security of this country is critical and CFATS is focused on that. I would also echo a comment that was just made that DHS has done a great job of being collaborative in working with us to get to that goal.

Senator CARPER. Thank you. Ms. Gibson.

Ms. GIBSON. I think we all agree that regulatory certainty is needed, and in that light I think we all—although one of our groups has a caveat—would support the multi-year reauthorization.

Senator CARPER. Thank you, ma'am. Mr. LeGros.

Mr. LEGROS. I agree that CFATS regulation is a great regulation. It just has its areas that it needs to be tweaked, if you will.

Senator CARPER. All right. Thank you.

Mr. CURRIE. I think we all agree that the security of chemical facilities is critical. Like aviation, this is one of the things that has actually been used in terrorist attacks in this country, so it is still a huge concern. But I think we all agree that the Federal Government needs to continue working across its departments and its programs to make sure that their oversight is sufficient.

Senator CARPER. Good. Mr. Wulf.



Mr. WULF. And I would just pile on, I think we all agree that the chemical security threat is a real one. It is a very relevant one. I think we agree, as well, that CFATS is well suited to the task of securing our highest-risk chemical infrastructure and that its strength, as a program, really lies in the commitment of the entire community. This is not something that DHS can do alone without the buy-in of our industry stakeholders who have been great across the board.

Senator CARPER. Thank you all.

I want to go back to something Mr. Erny said. I think he suggested maybe three ideas, one dealing with transparency, second, I think, there was the term “elimination” was used in one of your suggestions. I think a third one you used the word “establish.” But just go back to your three recommendations, and very briefly say what they were.

Mr. ERNY. Sure. Thank you.

Senator CARPER. And what I am going to do is ask anybody else on the Committee panel to comment, favorably or not.

Mr. ERNY. Sure. So the three top changes I think that would really do a big job in improving CFATS would—one is improve the transparency with the tiering determinations that are made. Often times I hear from our members that they are not directly engaged on what the risk factors are associated with their tiering. And so, there is no reason that the security manager of a site should not understand the details of the threat that he is supposed to be protecting against. This is the guy that has the responsibility for it. He has the authority, the resources to be able to put into it.

So I think DHS has done a better job——

Senator CARPER. I am going to ask you—go ahead. I do not want to run out of time.

Mr. ERNY. Just real quick——

Senator CARPER. Your next two ideas.

Mr. ERNY. You got me on a roll, so——

Senator CARPER. Yes. Thank you.

Mr. ERNY. And then, second, eliminate the requirement for this tariff screening personal surety item for the lower-risk tiers. And then, third, is establish a CFATS recognition program. This would essentially look at the industry stewardship programs in a way that would offer some regulatory recognition for those sites that are in full compliance.

Senator CARPER. OK. And let me just ask the other members of the panel, anyone have a concern with any of the three points that Mr. Erny has made? If so, please share those with us.

Ms. SATKOWIAK. Senator, if I may comment, please. I do want to mention—so I do agree, obviously, with transparency. Our member companies seem to feel that DHS, they are very friendly, very professional, and they will have that conversation with you, and we provide them the data, and then there is some delay as they go back to headquarters and they make decisions and then they provide a response, and then we have the opportunity to make adjustments, and then the process starts over. But we do not have that because it is not prescriptive. We do not have that ability to plan ahead. And so we would very much support some changes that way.

In regards to eliminating TSDB screening, I just want to remind the Committee that as ATF-regulated facilities, every single one of our employees and responsible persons must be screened in order to engage in the explosives business, whether it is constructive possession or whether it is physical possession. They must be screened against all prohibited person factors as ATF has established them. Now, ATF does screen against TSDB, although it is not considered a prohibitive factor. They do screen against it and then they will make referrals if there is a hit against TSDB.

And then I do want to support, if there is any recognition for CFATS programs. So IME, we developed these safety library publications that are actually looked at globally, not just here in the United States but globally, and these are established by the member company experts, the people that have expertise in the industry with explosives specifically. And so our compliance with these has always, as an industry, you always have the minimum basic regulations that have been established by ATF and then our best practices that are piled on top.

Senator CARPER. All right.

Ms. SATKOWIAK. But thank you for the opportunity.

Senator CARPER. And finally, Mr. Wulf, and then I think I need to step aside.

Mr. WULF. Thank you, Senator. I appreciate it. I will say with respect to transparency in tiering, it is something that we have strived to foster. In building the new risk-tiering methodology, we did this as a community with the participation of our industry stakeholders. We have published tiering fact sheets in an effort to inform companies about the types of factors that inform tiering.

We are certainly available to talk directly to facilities that have questions about their tiering, and for that matter, have, and continue to work with facilities as they are thinking about designing, building new facilities, to run a hypothetical risk assessment, a hypothetical top screen, to give them some feedback as to risk decisions they might be able to make to lower their risk profile and hopefully not find themselves covered by CFATS. But always eager to talk about ways in which we can do more. But in developing the new risk-tier methodology, we are very eager to try to do away with the historic black box that had been the perception of how our tiering was working.

With respect to the personnel surety program, the checks for terrorist ties that are now applied to Tier 1 and 2 facilities, we are open to working on this issue, but the thing I would note is that across the other 16 critical infrastructure sectors many of the stakeholders in those sectors find themselves without the authority to access the terrorist screening database and to ensure that those who have access to their critical infrastructure have been vetted for terrorist ties. And in those sectors they are pretty much clamoring for that authority.

So, I would worry a little bit about keeping that ability, that access to the terrorist screening database away from the vast majority of America's highest risk chemical facilities, but certainly open to discussing that.

And with regard to a recognition program, across our community, and, those who are sitting at this table representing some fine or-

ganizations—NACD, ACC, IME—have in place stewardship programs and they do great work, and they raise the bar for security, not only at the 10 percent or so of facilities that find themselves covered under CFATS but at those other 90 percent. So, very interested in working with the Committee on prospects for ways in which we can recognize those programs within CFATS, whether that is the ability to place facilities that are in good standing with those programs on a less frequent inspection cycle, or other ways of recognizing.

I think one thing we would want to ensure is that those programs are more or less in alignment with the 18 comprehensive risk-based performance standards that form the core of the CFATS program.

Senator CARPER. Mr. Chairman, I just wanted to thank you again. I thanked him privately and Senator McCaskill, for hosting this roundtable. When Dr. Coburn and I and our staffs worked on this 4 or 5 years ago—we actually worked on it for quite a while—and I was not sure we were going to be able to come to a consensus and pass legislation that would be signed into law. But I am proud of the really collegial effort that we are privileged to take part in.

At the time we realized that this is not the Ten Commandments. It is not written in stone, and we are going to learn some things as we go through the last 4 years, and learn some more things as we go through the next 4 or 5 years. But you have given us some wonderful feedback and it is interesting. Senator Johnson and I, a lot of times when we have these hearings we ask the witnesses, like, “What can we do to be helpful” in whatever issue we are dealing with. Almost always they say, “More oversight. More oversight.” And one of the nice things about having reauthorization period is it actually compels the oversight, and I think this has been actually most helpful. So thank you, one and all. Thank you.

Chairman JOHNSON. Let me just say, Senator Carper, I think you and Dr. Coburn ought to be commended. When you did reauthorize this you improved it. You did not make it more complex. We actually started to streamline it, which really is the purpose of a reauthorization. Let us take a look at what we have learned, utilize that information, and let us make this even better moving forward. And that is exactly what you did in 2014 and that is the goal here, so appreciate that.

In terms of streamlining, let me go right to the explosive industries and why did they lose that battle? Why were they not exempt like some of these other areas in our economy? And I will go to you, Mr. Wulf.

Mr. WULF. Yes. So I was not at DHS to fight that battle. In fact, I was over at ATF at the time, so I am not sure I can comment on the battle.

I was fighting some other battles.

Chairman JOHNSON To me it makes perfect sense. It seems like ATF, from what I have read, has done a really good job at keeping explosives out of the hands of line actors. Why would we not just carve them out and say, you are not going to serve two masters. In this instance we are going to just leave you under ATF.

Mr. WULF. ATF, absolutely great organization with a long history of regulating explosives, explosives commerce, and they have a focus on a number of aspects of safety, in particular, security as well. I certainly do not want to get into the relative strengths of the program. They are different in many respects. And, I am not sure that CFATS is not an inappropriate supplement to ATF regulations at the highest-risk facilities.

Chairman JOHNSON. OK. Tell me what CFATS adds in terms of the security of this Nation by doubly regulating the explosives.

Mr. WULF. Yes. I think we are sympathetic to the duplicative regulation situation, and, there are by our count, about 30 or 31 facilities that are regulated under CFATS only for explosives, that, if I am sort of counting things that I would not lose much sleep about exiting the program that would be pretty far up there.

Chairman JOHNSON. So let me just say, barring a really strong justification for having both regulatory agencies, I am going to be strongly supportive of exempting explosive industries from CFATS. So I would need more information to actually convince me that is not the right thing to do.

Mr. WULF. Yes. So I think there are some complexities and nuances among other things. ATF regulations do not cover IED precursor chemicals. So, the security and/or safety regulations that apply to explosives under ATF are not there for precursors. So I think, while we are certainly open to talking about the exit of explosives from the program, there is not similar coverage at ATF for the precursors.

Chairman JOHNSON. Can you explain what that means?

Ms. SATKOWIAK. That is a fair statement, actually. So ATF is very clear that they only have jurisdiction over explosive materials. And so if there is the materials, before they are mixed together and become an explosive material, they do not have jurisdiction there.

Chairman JOHNSON. So are those precursors also in and of themselves dangerous?

Ms. SATKOWIAK. No. Not in and of themselves.

Chairman JOHNSON. But combined, I mean, they can be made dangerous very quickly.

Ms. SATKOWIAK. Correct. I must point out here that there are materials that are on the retail market that do not fall under DHS CFATS such as the binary exploding targets that those are not our members' materials, and they are available via the Internet, retail store, that are not explosive materials until they are mixed. Those are precursors.

Chairman JOHNSON. OK. So again, I am very sympathetic to what they are making—

Mr. WULF. And we are sympathetic.

Chairman JOHNSON. I will ask you both to argue your case, and give me your best shot. Give the Committee staff your best shot on that.

Mr. Wulf, why four tiers? As we are talking about here, we are already basically breaking them into two tiers. You have 1 and 2, you have 3 and 4.

Mr. WULF. Yes.

Chairman JOHNSON. So why not just 1 and 4, or 1 and 2?

Mr. WULF. Yes. That is the way the program was historically arranged. It is fair to say there is——

Chairman JOHNSON. Is it time to fix it, maybe?

Mr. WULF. We are open——

Chairman JOHNSON. That is why I am asking.

Mr. WULF. We are open to that. I do not think there is too much difference in the way Tier 1s are treated versus Tier 2s, or the way Tier 3s are treated versus Tier 4s.

Chairman JOHNSON. So again, in reauthorizing, I am trying to simplify this. Can anybody think of a reason why we have four tiers? Would it be every bit as safe and would it streamline things to just have, you have this tier and you have, number 1, you have number 2, and leave it at that? Is there any justification for having four, other than we just set it up that way?

Mr. LEGROS. I think some facilities would have an issue with it, and actually doing it, because the way our RBPS guidance document, the way it is set up to where, for Tier 1 must have, Tier 2 should have, examples like that.

So as far as a tiering level is one thing, but when it comes to the implementation of security measures, if that was not also changed to coincide with those tiering levels——

Chairman JOHNSON. Again, I am concerned about overcomplicating these things, and, just because you are just below this threshold we are not going to make you do this. Maybe it would be just a lot easier for industry itself to say, no, I mean, if you are above this——everybody above that threshold is doing these things, rather than try and slice it and dice it so many different ways that it just makes it complex, and it makes it more difficult for industry. Again, I am asking industry on this thing.

Mr. EPPLI. So, Senator, candidly, when we look at new opportunities, currently we are Tier 3 at both of our facilities. When we look at new opportunities for customers and there is a potential that it may pop us into a Tier 2, we will push back really hard and probably not say yes to that opportunity, because of the tiering requirements and the additional work that we will have to do with DHS. We see there is a break, maybe, in 3 and 4 and 1 and 2.

Chairman JOHNSON. Anybody else want to chime in on that one?

Ms. MENENDEZ. Chairman Johnson, I would like to express my concern over the tiering transparency that we have, and if you are going to go to a 1 and 2 tier, the tiering transparency really has to be clear as to where you fit in those tierings.

As an example, we had a facility, the one that I opened up with on the former naval ammunition depot, that was previously tiered a 2, requiring us to implement all of these security measures. When CFATS 2.0 came about we had to re-tier. We dropped to a Tier 3, with no explanation. We had no change in the facility, no change in the chemicals, no change in the quantity of the chemicals, and we dropped down to a Tier 3.

Chairman JOHNSON. And there was not a criteria that showed you, even though you did not change, we changed our criteria so this is why you are a 3?

Ms. MENENDEZ. Correct. And so, of course, my management wants to know if capital investment was necessary.

Chairman JOHNSON. Mr. Wulf, how can that be? I mean, honestly. How can we have these four tiers, and industry does not even know what the definition is?

Mr. WULF. So we do, as I mentioned, publish, and somewhere in my pile of papers I have a tiering fact sheet that outlines the factors that inform tiering.

Chairman JOHNSON. How many pages is the tiering fact sheet?

Mr. WULF. It a single page. Single page. Maybe double-sided.

Chairman JOHNSON. Is that not sufficient?

Ms. MENENDEZ. It is not prescriptive.

Chairman JOHNSON. So this is one example where you actually want a little bit more information from the Federal Government.

Mr. WULF. So I would say, as well, and I think I have said it before, that we are very open to talking directly, and we talk almost on a daily basis to facilities about their tiers, and again, to running prospective facilities through hypothetical tiering. So we appreciate that feedback and our goal is to provide maximum transparency.

Chairman JOHNSON. So here is task number two. The first one is we have to figure out what we do with explosive companies. The second task, industry and DHS, we need to figure out what we are going to do with the tiering system, and, how do we define it and whether we really should have four tiers, three tiers, or two tiers. What can we do to make that completely transparent, where the criteria is incredibly obvious, and it actually matches what the risk is and what the reaction would be. This should have been done sooner, but let us do it—with this reauthorization, let us get this thing nailed. OK? I think that makes perfect sense.

Mr. WULF. I think that is fair. And, I think important to note, though, that we have a new and improved risk-tiering methodology that now accounts more fully for all elements of risk. So while there has been some change in tiering as we have rerun everyone through that we are very eager to ensure that regulated facilities understand why tiers might have been changing.

Chairman JOHNSON. OK. Well, I do not think they do, and I am always concerned, too, the mission creep and the greater complexity. Again, what I am trying to do in this reauthorization would be to simplify this, without risking safety. And, by the way, I think when you simplify things you are going to make it more safe and secure anyway.

Yes, Ms. Gibson.

Ms. GIBSON. I guess the only concern I would have is that DHS did just go through this whole re-tiering process with the new methodology, and facilities are settled into that now, and if we change the tiers we would have to go through that process yet again.

Chairman JOHNSON. But did you understand what it was when you re-tiered them?

Ms. GIBSON. From the association perspective, I heard a couple of comments from our members, but they were able to talk to people at DHS headquarters and talk through it, so it was more of an individualized basis where they had questions and they hooked up with the right people to give them some answers.

Chairman JOHNSON. Mr. Erny, you are with the chemistry society. I mean, is that similar as well?

Mr. ERNY. Yes.

Chairman JOHNSON. I do not want to force something—

Mr. ERNY. I think you have hit on a good thread here. I mean, we have an opportunity. There are probably a lot of good ideas like this, simplifying the tiering levels, reducing the number of COIs.

Chairman JOHNSON. But again, if simplifying is to have to go through the entire process again, it may not be worth the simplification.

Mr. ERNY. Yes.

Chairman JOHNSON. OK?

Mr. ERNY. Yes. There are going to be some rumbling about going through this process again. There is no doubt. I agree with Jennifer.

Chairman JOHNSON. So again, I want to get a better assessment of exactly where we are in terms of definition, the criteria, the transparency of it, and if it really does make sense. Again, I do not want to upset the apple cart. I really do not. Even if it may be flawed, if it is working well—keep—if it ain't broke at this point, do not fix it. OK?

Ms. SATKOWIAK. Mr. Chairman, if I may add one more thing in terms of simplification. When you asked about the precursor materials, in the commercial explosives industry we treat precursor materials just like they are explosives, in terms of distribution. So if you are not qualified in the same way that an explosives licensee or permittee is to receive explosive materials, our industry members do not transfer those precursor materials to you.

Chairman JOHNSON. OK. I am just looking at my notes I made with each witness here. Again, I need to underscore again, because I am asking tougher questions, how much I appreciate the fact that DHS really does approach this cooperatively.

Now, that being said, when I talked about the Stockholm syndrome earlier, one of the things I will ask industry to do is view yourself potentially as whistleblowers and provide us—because, again, there is concern. I mean, you would be crazy not to be a little worried about something you might say that might rub DHS the wrong way, and potentially retaliation. I see that all the time in government. I am not accusing—OK. So I do want a completely open format for you to convey suggestions, complaints to our staff, not in an open hearing, not for publication, but really under the protection of whistleblower protection this Committee affords. OK? That would be the best way to actually get this done.

So you may not be free to say everything you want to say on the record here today, but you are completely free to, and I encourage you to provide that kind of information to the staff. OK? Again, underscored by the fact that I truly do appreciate, and I do not doubt for a second that this is one example of government working cooperatively with industry—and I think your track record proves it—working together with that shared goal of keeping this Nation safe. I mean, this is actually a pretty good story from that standpoint.

I want to ask, Mr. Erny, so, listen, I love awards for things, the leg lamp. But other than getting a leg lamp, what would be the purpose of a CFATS recognition program?

Mr. ERNY. So one thing that a lot of us have here in common are the stewardship programs, right, and we all have a security component to that, and we are largely doing the same—a lot of the same things that you see in the CFATS program—the requirement to do vulnerability assessments, establish site security plans, implement measures, all that kind of thing.

We think there is a real opportunity here for CFATS to be able to leverage those programs. So some ideas about what kind of recognition could you give companies. I mean, you would have to lay out some criteria. We have some very definitive ideas about what kinds of criteria should be embedded in CFATS that outlines sort of this minimum performance for these programs. And so some of the incentives could be things like risk tiering credit for companies that are in compliance with these industry stewardship programs.

Chairman JOHNSON. So it would not be for a leg lamp. It would be for—

Mr. ERNY. Regulatory recognition.

Chairman JOHNSON [continuing]. Exemption of certain more onerous regulatory burdens.

Mr. ERNY. Absolutely.

Chairman JOHNSON. So you would be self-certifying in that type of thing.

Mr. ERNY. Yes.

Chairman JOHNSON. OK. I kind of figured that but I wanted you to get that on the record.

Mr. ERNY. Yes.

Chairman JOHNSON. Again, I come from industry where you had International Organization for Standardization (ISO) certification, based on that, if you were ISO certified at a certain level, when medical device manufacturers came in there were just things you did not have to go through—

Mr. ERNY. Correct.

Chairman JOHNSON [continuing]. In terms of your audit again because you had done that yourself.

Mr. ERNY. There are some good example out there in this regard. I mean, this is not a unique idea. And I think we just have not broken into the CFATS realm yet.

Chairman JOHNSON. Mr. Wulf, do you have any problem with that?

Mr. WULF. No. Not—

Chairman JOHNSON. Do not you think that is a really good idea?

Mr. WULF. I do not have a problem with it, conceptually. I think we actually have the authority now to do that. I certainly would not have a problem with the recognition in a statute.

Again, and we have certainly talked about this openly across CFATS industry stakeholder community, we would want to work, and I know that our industry stakeholders are committed to working to ensure that those stewardship programs, if they were to be recognized under some sort of CFATS recognition program, would align, in effect, with the 18 risk-based performance standards of CFATS.

Chairman JOHNSON. So again, in industry they do that for their own benefit. Again, the medical device industry. Things like ship to stock type of certification programs. That saves their auditors



time. But they go and they have surveillance, those types of things, but it just is a far more efficient and effective method of doing it. So I think that is something, staff, we ought to seriously take a look into, if you even have the authority, something in this reauthorization to spur you on to actually using that authority to create those types of things.

Mr. WULF. Thank you.

Mr. EPPLI. Mr. Chairman, as an operator in the industry, we would be fully supportive of this. It would help us tremendously reduce the amount of duplicative work that we have to do, from the governmental side as well as from our own internal industry standards, which are really stringent.

Chairman JOHNSON. No. It is bad for business to have chemicals stolen and used for nefarious purpose.

Mr. EPPLI. That is exactly right.

Chairman JOHNSON. We are kind of nibbling around a cost benefit. According to my briefing, CFATS costs about \$70 million per year to the government. Actually, it surprised me. In the briefing it said some businesses have spent \$100,000 to comply. I would think some businesses spend a whole lot more than \$100,000 to comply. Does industry have any estimates in terms of the cost of complying with this so far?

Mr. EPPLI. So I can give a little update. This year alone, to increase our site security cameras and our electronic security for our buildings, again, two facilities, one that is 66,000 square feet and one that is 44,000 square feet, we spent between \$25,000 and \$35,000 on each facility, just this year. That is just for capital equipment. That is not the training. That is not our own internal personnel.

Chairman JOHNSON. And no offense, but you are a small business.

Mr. EPPLI. And we are a small business.

Chairman JOHNSON. Yes. So I would think the larger businesses spent far more than \$100,000, which is, again—I think my briefing is just off here. I would think the industry has spent tens if not hundreds of millions. Ms. Gibson.

Ms. GIBSON. That is a tough question because a lot of it depends on what the facilities already had in place before they became CFATS regulated. For example, a lot of the companies that are members of NACD practice Responsible Distribution. They already implemented security measures, as did others. So I think it is across the board, depending on what their status was before CFATS.

Chairman JOHNSON. OK.

Mr. ERNY. Yes. And from ACCs perspective, we do an annual survey, and it is not CFATS specific. But we estimate that companies annually spend anywhere from \$50,000, depending on the size and complexity, up to about a half a million dollars a year.

Chairman JOHNSON. So I think, to a certain extent, what your answers are confirming to me is industry is already doing an awful lot. This may organize the efforts but you are just kind of utilizing what resources you have already—what controls you have already put in place, and getting them to comply with what CFATS is asking you to do.

Along those same lines, what other methods of control are there? Other agencies—OSHA, EPA, local fire departments, insurance models. I mean, are we using CFATS and are we trying to leverage all these different control agencies to accomplish the same goal?

Ms. SATKOWIAK. No. I would argue that we are not, particularly in the explosives arena. DHS specifically does not recognize the jurisdiction, not only—in our case—ATF, but DOD, the Pipeline Hazardous Materials Safety Administration (PHMSA), the Department of Transportation (DOT), and our members have had to layer on top of already—if you were to manufacture one type 1 magazine, you are already looking at a cost of \$100,000, and then add on \$700,000 for fencing around a 400-acre site.

We have one member company that is DOD regulated, plus ATF regulated, and they were looking at options that they had to comply with DHS suggestions, which ranged from between \$300,000 to \$3 million, because it is in a very remote area, and to have the type of monitoring system which DHS was suggesting, and even to include a cell phone tower to send the signals back. That member company is a small, woman-owned business. They have 20 employees and they are spending \$150,000 a year, which he figured was a bargain to have some security guard come through at the number of hours that DHS has prescribed. That is really hard on a 20-employee member company.

Chairman JOHNSON. Yes. My own experience is government often is not particularly sympathetic with the cost of compliance to their regulations.

Does anybody else want to chime in in terms of leveraging, or lack of leveraging, with some of these other control agencies?

Mr. EPPLI. Yes, Mr. Chairman, if I could. First of all, I want to reiterate, we have appreciated DHS's position, so I want to state that, David. But we are regulated by DOT, EPA, OSHA, the Drug Enforcement Agency (DEA), U.S. Food and Drug Administration (FDA), and those are the Federal programs, and there are a number of State programs and then a number of local programs, including the first responders, which we have a great relationship with. But we do not see any collaboration amongst those organizations to help reduce our burden.

Chairman JOHNSON. Talk about the local responders. I am assuming you are basically talking about police, but mainly, in this case, fire department.

Mr. EPPLI. Mainly fire.

Chairman JOHNSON. Again, I have had experience, and Oshkosh local fire department really does a great job of just educating everybody, in terms of what they need to do, because if something were to happen, they need to know where things are. It was interesting, particularly in rural locations, the volunteer fire departments, you do not get that type of, I will call it attention, like we got from very professional, full-time firefighting force in Oshkosh. But what is your experience in Columbus?

Mr. EPPLI. So in Columbus they do have a volunteer fire department. That is part of the staff. We have a close relationship with them. One of the things we realized is we needed to help them learn about our business, so we actually collaboratively worked with them, and they worked with us in scheduling an onsite train-

ing session about 2 years ago. They brought in all types of other agencies and we worked together so they could understand the chemicals we have onsite. Because, candidly, one of the things we want to do is manage any hazardous issues we have internally. So we have our own hazmat team, probably better trained than the local fire departments.

Chairman JOHNSON. So let me ask the two industry association reps, in terms of your experience with the cooperation between these different control agencies, but even local fire departments. It does not sound like it is as professionally prevalent as I experienced in Oshkosh.

Ms. GIBSON. Yes. It depends on the area, because some are volunteer, as Randy said. One of our Responsible Distribution codes is coordinating with local responders, so all of our members are required to do that to the extent they can under our program.

But yes, really, it depends on the area. Some, areas are very active groups and responders, but it is just a resource issue on their end, in some cases. But it is a top priority for our members.

Chairman JOHNSON. Mr. Erny.

Mr. ERNY. Yes. I mean, I would largely echo what Jennifer just said, with the only exception many of the large chemical complexes are self-responding. They have their own fire brigades right onsite. They interact with some of the locals, but most of them are self-sufficient in this regard, or like down around the Gulf Coast region, where there is a high density of chemical processing, oil and gas, they are involved in these co-op initiatives down there.

So we are probably a little bit different in this regard. We do not have a lot of the small operators out in remote America that are dealing with volunteer fire companies.

Chairman JOHNSON. OK.

Ms. MENENDEZ. May I comment as well?

Chairman JOHNSON. Sure.

Ms. MENENDEZ. With regard to working with the local responders, I do agree. It really depends on the site. Every site is—whether it is in a large community, some of our employees, because it is such a small community, they are members, or their families are members of the local responders, so they are aware of what we do because of their family members. We reach out to them every year. We are required to report, under the Right to Know Act, the chemicals that we have in place, and we invite our members of the local fire departments to come out and learn what we do, see what we have onsite, understand how to respond properly. But it is difficult when you are dealing with a voluntary fire department.

Chairman JOHNSON. So my last question, and then I will go down the table here and ask you for anything that you just have to get off your chest. But, the big chemical guys, they are going to have all the security, all these programs in place. It is really the smaller folks that are going to be more vulnerable, and do not have the resources to do that. To me, probably the best defense against that is a really good reporting system, because even small guys, hopefully, will notice if something is missing, and they will be concerned about inventory shrinkage, or whatever.

As part of this, do we have a really good reporting system when that happens, kind of a no-fault, with no penalties, but literally a

small operator out in a rural area going “I am a little concerned because we are just missing three pallets of this dangerous chemical.” Is that a very streamlined reporting system up to DHS?

Ms. MENENDEZ. Interesting enough, we account for every movement of our explosive materials. We double-count four in four different instances. So eight times a day we are counting, when we acquire the material, when we put it on our trucks, when we send it out to the customer sites, when we arrive at the customer site, when we use it, when we put it back in the trucks, and then put it back into our magazines. It is counted by two people every step along the way.

So we feel that when we do incur a theft or a loss of explosives, while ATF requires us to report within 24 hours, we report by the end of the day. And we may have to amend if we discover where that product was, but we report immediately to ATF, we report immediately to our law enforcement, and we fill out a form and send that in to the bomb center.

Chairman JOHNSON. OK. But again, you are an exception in this category, a good exception. What about in just basic chemistry?

Mr. LOUCHHEIM. Well, I will take a stab first here, sort of with a lot of smaller facilities around the country in rural America. Like I said earlier, we probably estimate around 6 to 6,500 agricultural retail facilities around the country. About 1,500 facilities, or 1,400 of those, approximately, are CFATS-regulated facilities.

I would kind of circle back on our ResponsibleAg program, actually. This is, I think—which, along with recognition programs I think has a place to be part of a CFATS reauthorization in some fashion. For ResponsibleAg, for our industry, it is a third-party-audited system with auditors that go through these facilities. Like I said before these facilities typically only have 5 to 10 employees at them. So I think in your comments previously you mentioned, there is not always the same sophistication in those settings as there would be at a major billion-dollar production facility.

So ResponsibleAg. That is working with these facilities to comply with OSHA, DOT, EPA, DHS regulations, to make these facilities safer, help them work to be safer and comply with basically a myriad of Federal regulations that are out there.

Yes, the agencies could sometimes work together a little better to streamline things, but we are going to work to make sure our industry is as safe as possible through ResponsibleAg, and other initiatives. Theft and diversion, knowing your customer is essential. We preach that to our members, and our members already know it.

Chairman JOHNSON. But again, the main point of CFATS is if these chemicals are stolen, to be used by malignant actors. Right? So again, I am just asking, as part of this, do we have a really good, well-communicated and well-executed reporting structure, even to the small guys, because, quite honestly, they are the ones that are going to be more vulnerable. If I wanted to steal chemicals, I would go to a little guy that does not have the million-dollar security system.

Mr. WULF. Mr. Chairman, I think that is where CFATS makes a big difference. So, for high-risk chemical facilities, one of the risk-based performance standards is RBPS-9, focused on response. And

under that standard, facilities connect with their local responders, establish those reporting chains. In many cases we will help them to facilitate that contact, and I think that goes a long way.

Chairman JOHNSON. But in order to have to comply with RBPS-9 do they have to be a Tier 1 or 2?

Mr. WULF. No. That applies across the board. And I would mention, also, that, our detection and monitoring standards are aimed at ensuring that facilities have in place measures that enable them to detect thefts or diversions in near-real time, so as to promote an effective law enforcement response. We are certainly sensitive to the costs that those sorts of measures can bring to a facility, but we pride ourselves on compliance assistance. So our inspectors are not out there just doing compliance inspections. They are available, our headquarters staff is available to work with facilities, to talk through what, in many cases, can be lower-cost options to meet the spirit of the risk-based performance standards.

Chairman JOHNSON. OK. Why do not we close this thing out, and we will start with Ms. Satkowiak.

Ms. SATKOWIAK. Thank you again, Mr. Chairman, for this opportunity. IME has been asking for years. We have been seeking for regulatory relief to remove explosives from the chemicals of interest, Appendix A, and getting, again, relief from that duplicative regulation. We have been asking for data to show justification as to why explosives materials were included under the program.

Certainly, again, the government data that is out there shows that in the bombings that have happened here in the United States, only between 1 and 2 percent of those have involved commercial explosives materials, and the number of thefts are so low, they have plummeted since 1985. In the years leading up to CFATS, they have plummeted more than 80 percent, and it was industry and ATF regulations that brought that down. So CFATS program did not have any demonstrated improvement in that security, despite the millions of dollars that our member companies have incurred.

So I just also want to reinforce, as you are considering the removal of explosives materials through a statutory exemption, which is what we are looking for, is that by ATF requirements, which I sometimes get the feeling are being discounted by DHS, we have accountability for every single trace amount of explosives materials. There is no threshold. It is any amount of explosives materials, they are accounted for. I have heard the term "track and trace." It is not exactly what it is called under ATF. We have accountability for every single movement. So we know if any piece has been missing, diverted, or has fallen into the wrong hands. Every single of our employees and responsible persons, again, are vetted.

So for these reasons we feel that these duplicative regulations can be removed off of the explosives industry, and thank you again. Appreciate your time.

Chairman JOHNSON. Ms. Menendez.

Ms. MENENDEZ. Thank you. Each business has its own regulatory environment applicable and beneficial to its operations. It is with confidence that Austin Powder relies on the Federal explo-

sives laws and regulations and 27 CFR 555, Commerce and Explosives, to remain compliant as we build our business.

We respect those that appreciate the CFATS oversight in otherwise unregulated or minimally regulated businesses, but my testimony today was meant to provide evidence that in a highly regulated industry like the commercial explosives industry, layering additional DHS regulation on top of existing ATF regulation has proven to keep commercial explosives secure, is unnecessary and very confusing.

Chairman JOHNSON. OK. I understand. Mr. Louchheim.

Mr. LOUCHHEIM. Sure. Thank you, Mr. Chairman, for holding the roundtable today. I appreciate your kicking off the process and getting things moving. Like I said earlier, we support a multi-year reauthorization of the CFATS program. Four to 6 years seems to make sense.

In general, the program provides a good framework for security measures for a number of our members' facilities, and we think that is helpful and valuable. We think transparency is important to look at as we do reauthorization. We think that the Personal Surety Program, as has been mentioned, should be limited right now to Tiers 1 and 2. And we think stewardship programs have a valuable place in the program, to bolster our Nation's security.

Chairman JOHNSON. Again, you do not have to restate what you have already stated, but this is for new information. Mr. Erny.

Mr. ERNY. Yes. They stole all my thunder. I think I probably would have said exactly the same thing. Appreciate the opportunity. I look forward to working with your staff to find more ideas about how we can streamline and make this program better. Thank you.

Chairman JOHNSON. Mr. Eppli.

Mr. EPPLI. Thank you for the opportunity to be here. We do want a safe country. For business, we need certainty, so we would like some certainty. I think that ties to how long this should be reauthorized. We believe it should be reauthorized. I would stick with at least a minimum of 4 years. DHS has been good to work with.

I would like to get some recognition of some of the other duplicate work that we do, with either agencies or with the recognition of the stewardship programs that we have in place through Responsible Distribution, with NACD, or Responsible Care at ACC.

Chairman JOHNSON. OK. Ms. Gibson.

Ms. GIBSON. Yes. Thank you, Mr. Chairman, for holding this roundtable today. I would echo what my colleagues here have said and just want to reiterate that even though chemical distribution is very highly regulated by many agencies and we have a 28-page regulatory resource guide and checklist for our members; we do still strongly support the CFATS program and DHS's approaches to implementing it. We think that should be a role model for other agencies, and we look forward to working with you and the Committee on reauthorization.

Chairman JOHNSON. Mr. LeGros.

Mr. LEGROS. Thank you, Chairman, for having me here today. I would just like to reiterate the reauthorization of the CFATS program, and again, the reason why I am here is as far as the cyber and the training issues that need to be addressed by the agency.

Chairman JOHNSON. Mr. Currie.

Mr. CURRIE. Two quick adds to the discussion. One, I think we have been looking, at GAO, at this holistically across the country, and I think measuring risk reduction or the security benefit is really difficult. It is hard to do that with just outputs. So I think we need to continue to push DHS to try to measure across the country how we are reducing risk.

The second piece is we have done a lot of work on overlapping Federal regulatory programs in a lot of areas, and the Federal fatigue that can set in when that happens. And I think there is a lot that can be done at the agency level, and with the States, to coordinate behind the scenes, to actually make a big impact on a lot of that.

Chairman JOHNSON. Mr. Wulf.

Mr. WULF. Excellent. Thank you. I thank you so much, Mr. Chairman. I think this has been a great dialogue. I think we are in agreement that CFATS does make America more secure, that long-term authorization affords important stability to the program, important certainty for our industry stakeholders. I would note that I am certainly not averse to, even during a longer term, 10-, 20-, 30-year authorization period—

Chairman JOHNSON. That will never happen. I am just telling you, it would never happen. I am sorry.

Mr. WULF. But I will say changes can be made.

Chairman JOHNSON. Unfortunately, we have so many things to look into. The only reason we are looking at this today is because we have to reauthorize it.

Mr. WULF. Yes. I appreciate that. And I also appreciate the active engagement of our industry stakeholder community. I think, as you have seen today, they are not a shy group, not shy about telling us how they think the program can improve. And, this is a shared enterprise, and I think it is a program that is well tailored to the task at hand. It is narrowly targeted to America's highest-risk chemical facilities, and really do appreciate your leadership on reauthorization.

Chairman JOHNSON. OK. Again, thank you for your service in leading an effort that really is recognized as being one that is cooperative.

Just to reiterate, we would not be having this roundtable if it were not for the reauthorization. Permanency is, from my standpoint, off the table. It is really what is the proper length of time.

Again, we have an opportunity here, and you have a Chairman who comes from industry, who looks with a great deal of skepticism, of government control over anything. But the goal that you laid out there, we all want a safe, secure America. And we face threats. It is a very unpleasant reality but it is one that we have to face.

So I am encouraged by the cooperation. I am encouraged by the fact the last reauthorization honed this program a little bit better. I think there is definitely room for improvement. I come from a manufacturing background, continuous improvement. So I am really encouraging everybody at this table, I think the roundtable itself was very cooperative. But also recognize I have the folks here that could potentially be suffering from Stockholm syndrome.

I want you to be completely honest with whistleblower protections contacting our Committee. For the same thing, the GAO, as well as the Department. Let us be as honest and forthright as possible. Let us produce a better reauthorization than what is in law today. And again, let us not fix what is not broken. Let us not upset the apple cart just because it might be a little bit better. I think we have to really take a look at the cost of changing something versus the benefit of making it a little bit better. OK?

So again, this is a really good opportunity. We have the time. This looks like a very cooperative group. I just really encourage you to work very closely with staff, be completely honest, and let us end up with a reauthorization that just makes this a lot better program. OK?

With that, the roundtable record will remain open for 15 days, until June 27th, at 5 p.m., for the submission of statements and questions for the record, although you can always contact our staff. OK?

With that, the roundtable is adjourned.

[Whereupon, at 12:24 p.m., the Committee was adjourned.]



## A P P E N D I X

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### **“Examining the Chemical Facility Anti-Terrorism Standards Program” Opening Statement of Chairman Ron Johnson June 12, 2018**

The purpose of this roundtable is to examine the state of the Department of Homeland Security’s Chemical Facility Anti-Terrorism Standards program, or CFATS, a regulatory program intended to improve security at high-risk chemical facilities.

The nation’s chemical industries are critical to our economy and way of life. According to the American Chemistry Council, who is here today, the chemical industry is directly involved in 96 percent of manufactured goods. Businesses that use chemicals employ millions of American citizens, and help to feed, clothe, and shelter people around the world. Chemical industries are critical to our nation’s exports and economic prosperity. As a former plastics manufacturer, I understand that these enterprises are the backbone of our nation’s economy.

The chemical industries also pose a potential security risk. Adversaries, including terrorists, may seek certain chemicals to harm Americans. In 2007, Congress created the CFATS program to regulate security standards for certain high-risk chemical facilities. The program is now set to sunset in January 2019. In the coming months, this Committee will consider whether and how to reauthorize the program. Today’s roundtable will assist us in that task.

The CFATS program has a troubled track record. GAO and other watchdogs have identified major problems in the past, including long backlogs to review security plans, a flawed categorizing methodology that did not consider key risk elements, and program management issues. Interest groups have raised questions about the program’s security value and potential duplication with other regulatory regimes. Other stakeholders have highlighted the absence of effective metrics to measure the value of security investments and whether the program is keeping us safer. They also asked for greater transparency from the Department so they can make more informed security adjustments moving forward.

In 2014, the Committee passed legislation to reauthorize and reform the CFATS program. I am pleased that DHS has made progress managing the program, including working through the large backlog of Site Security Plans and conducting outreach efforts and inspections that emphasize security performance over compliance. These improvements helped lead many industry groups, including some present today, to support the program’s reauthorization. I am also mindful that there may be other reasons for why industry groups may favor this program’s continuation, including the fear of more costly or disruptive regulatory regimes that could appear in CFATS’s absence.

Today we have assembled a roundtable of key stakeholders to discuss the program’s future. We welcome representatives from DHS, GAO, and the private sector, including representatives of industries regulated by CFATS. I thank everyone for joining this roundtable, and look forward to your comments.

**U.S. Senate Committee on Homeland Security and Governmental Affairs**  
**“Examining the Chemical Facility Anti-Terrorism Standards Program”**  
**June 12, 2018**  
**Ranking Member Claire McCaskill**

**Opening Statement**

Thank you, Mr. Chairman. I appreciate you holding this roundtable.

The Chemical Facility Anti-Terrorism Standards program, commonly referred to as CFATS, initially began over a decade ago when Congress authorized it in late 2006. The program became operational shortly thereafter in 2007. As is clear from the name, the CFATS program is part of our country’s counterterrorism efforts. It is designed to secure facilities with hazardous chemicals of interest (COI) to reduce the possibility of those chemicals being used in a terrorist attack, as they were, for example, in the Oklahoma City bombing in 1995.

CFATS uses a risk-based approach to determine which facilities should be covered by the program. Facilities that must comply with CFATS manufacture or store at least one of 322 chemicals of interest at or above a certain quantity and concentration. Covered facilities must develop and implement site security plans that meet the risk-based performance standards established by DHS.

There are 18 risk-based performance standards that facilities must implement, ranging from securing the perimeter of a facility to conducting background checks on employees who handle hazardous chemicals. However, it is up to each covered facility to determine and implement the appropriate measures

that fit the unique needs of each facility. DHS does not mandate that fences be built to a certain height, for example, or that certain surveillance equipment is used. The program is intended to be flexible and tailored to each facility.

CFATS had a rocky start its first few years. At one point, the program faced an extensive inspection backlog, and, as I understand it, DHS struggled to review facilities' site security plans in a timely manner. These issues were compounded by the fact that for a period of time, CFATS was authorized on a series of short-term spending measures. That is not an ideal way to structure and manage a regulatory program. The concern that the program would lapse or that Congress would dramatically change it prevented DHS from making long-term adjustments to develop a sustainable regulatory regime. And, businesses couldn't operate effectively and make thoughtful security investments in such an uncertain environment.

I'm told by DHS and industry alike that the program has come a long way since it was last reauthorized in 2014. We secured a four-year authorization, which turned out to be a game changer. DHS had the space it needed to make adjustments to the program, and improve the experience for covered facilities. By all accounts, CFATS is now far more streamlined, user friendly and less cumbersome. Moreover, companies finally received the regulatory certainty and stability they needed to make lasting investments in the security of their facilities.

The current authorization for the CFATS program expires in January 2019. I'm hopeful that this roundtable will help us determine which aspects of CFATS are working well and perhaps identify some areas that need to be tweaked to enhance security, address gaps in the regulation, and further improve the program's efficiency. Given the tight legislative schedule remaining, this Committee has our work cut out for us to make sure CFATS does not lapse, but I'm confident that we can get it done in a way that ensures we are keeping hazardous chemicals away from terrorists while allowing businesses and communities to thrive. Ultimately, this program is about keeping Americans safe from terrorism.

Thank you Mr. Chairman, and I look forward to hearing from our roundtable participants.



Written Testimony

of

David Wulf

Acting Deputy Assistant Secretary for Infrastructure Protection

National Protection and Programs Directorate

U.S. Department of Homeland Security

Before the

United States Senate Committee on

Homeland Security and Governmental Affairs

Regarding

The Chemical Facility Anti-Terrorism Standards Program

June 12, 2018

**Introduction**

Chairman Johnson, Ranking Member McCaskill, Members of the Committee,

I appreciate the opportunity to appear before you today to discuss the development and maturation of the Department of Homeland Security's (DHS) regulation of high-risk chemical facilities under the Chemical Facility Anti-Terrorism Standards (CFATS) Program. On behalf of NPPD, I also want to take this opportunity to thank this committee for including legislation transforming NPPD into the Cybersecurity and Infrastructure Security Agency in the recent DHS authorization bill. The new Agency would continue NPPD's mission of leading the national effort to improve critical infrastructure security, coordinating the protection of the Federal Government's networks and physical infrastructure, and helping entities in the public and private sectors manage potential cyber risk. As the threats facing our National security grow and evolve every day, we look forward to continuing to work with this committee to pass that critical legislation.

**CFATS Program Overview**

The CFATS Program is a vital part of our nation's counterterrorism efforts as we work with our industry stakeholders to keep dangerous chemicals out of the hands of those who wish to do us harm. Since the CFATS Program was created, we have engaged with industry to identify and regulate high-risk chemical facilities and to ensure they have security measures in place to reduce the risks associated with the possession of chemicals of interest.

The cornerstone of the CFATS Program is the development, submission, and implementation of Site Security Plans (SSPs), or Alternative Security Programs in lieu of SSPs that document the security measures that high-risk chemical facilities utilize to satisfy the applicable Risk-Based Performance Standards (RBPS) under CFATS. Due to the diversity

of facilities who hold chemicals of interest, it is important to note that these plans are not “one-size-fits-all,” but are in-depth, highly customized, and account for each facility’s unique circumstances.

In order to determine whether a facility is covered under CFATS, the facility submits a Top-Screen to the Department’s Infrastructure Security Compliance Division. Since we began collecting this information in 2007, more than 40,000 facilities have reported chemical holdings. Based on the information received in the Top-Screens, DHS determines which facilities are at high-risk of terrorist attack or exploitation and assigns each of these to a tier.

Facilities determined to be high-risk must submit a Security Vulnerability Assessment and SSP or Alternative Security Programs to DHS for approval. The plan must include security measures that meet the RBPS established by DHS. The Department performs an authorization inspection at the facility prior to granting a security plan approval to ensure that the measures contained in the security plan are appropriate given the facility’s specific security issues and unique characteristics. Once a facility’s plan is approved, DHS conducts regular compliance inspections to verify that a facility is implementing the agreed-upon security measures.

#### **CFATS: Where We Were**

I recognize that for many on the Committee, today’s roundtable represents the first significant engagement with the CFATS Program. For this reason, I think it is important to first look back at the state of the program prior to 2014.

The CFATS Program was born out of the recognition that, though we had worked hard to strengthen our homeland security in the aftermath of the September 11, 2001 attacks, the nation continued to face very real threats. In particular, it was noted by Congress that there existed

vulnerabilities at facilities holding chemicals that, in the wrong hands, had the potential to injure or kill large numbers of individuals and do significant physical and economic damage. It was this recognition that led Congress to establish the CFATS Program under Section 550 of the Homeland Security Appropriations Act for Fiscal Year (FY) 2007.

The initial CFATS statute required the issuance of interim final regulations within 6 months of enactment, and, on April 9, 2007, the Department published the CFATS regulations in the *Federal Register*. Yet, as with any complex regulatory program launched in a short amount of time, the early days of the program were not without their challenges, many of which have been documented in other forums.

When we last appeared before the Committee, the CFATS Program was making progress, however significant challenges remained. When we last met, lacking separate authorizing legislation, the program continued to be reliant upon the federal appropriations process for authority to regulate. This authorization structure not only affected employee morale, it failed to instill confidence in industry stakeholders making them hesitant to make critical investments in CFATS-related security measures and enhance their security posture.

Further, this reliance on the annual appropriations process put our nation at risk, as evidenced by the funding lapse in October 2013. During this lapse, not only did the programmatic activities of CFATS cease, its authorization also expired. This gap caused many facilities to question whether the regulations were still in effect and the Department to question whether it had the authority to take enforcement action had there been an exigent need or imminent threat.

During my previous testimony, I had informed the Committee that the Department had undertaken a thorough review of our risk assessment process. The CFATS risk-assessment



methodology is one of the foundational elements of the program, as DHS uses it to determine which of the tens of thousands of facilities in possession of threshold quantities of chemicals of interest are at high-risk of terrorist attack or exploitation and are, therefore, required to develop CFATS security plans.

The review included documenting all processes and procedures relating to the risk assessment methodology, conducting an internal review of the risk assessment process, and initiating an external peer review of the risk assessment methodology. All three of these had been completed, and after a review of the Peer Review Final Report, the Department began to consider changes to the tiering methodology.

Finally, we were continuing to work our way through a backlog of SSP reviews. At the time of my 2014 testimony, CFATS covered over 4,200 facilities of which less than half had an authorized SSP and only one-fifth had an approved plan. Though the program had begun to improve the pace of authorizations, inspections, and approvals, the Government Accountability Office (GAO) had projected that it would take the Department seven to nine years to work through the backlog.

#### **CFATS: Where We Are**

As I noted at the outset of my testimony, it has been four years since our last CFATS-related appearance before the Committee, and I am happy to report today, we have made significant accomplishments and the trajectory of our progress is clearly upward. Through the collective efforts of our dedicated federal workforce, stakeholders, and the leadership of lawmakers, the CFATS Program has matured significantly in that time.

### **Clearing the SSP Backlog**

In July 2016, after more than 6,000 inspections and Compliance Assistance Visits, and review of nearly 3,000 SSPs, I signed off on the approval of a milestone SSP of a chemical manufacturing facility. This approval, after three years of concerted effort to move the CFATS program forward, effectively eliminated the backlog of SSP reviews 6 years ahead of GAO's projections. I am sure Chairman Johnson will appreciate knowing that this milestone facility was located in Wisconsin.

With this achievement, we have transitioned from "start up" to a more mature "sustainment" posture, and are now able to more fully focus on conducting compliance inspections and creating a stronger culture of security. Whereas previously our inspections were overwhelmingly of the pre-approval Authorization Inspection variety, now the majority of the inspections we are conducting are post-security plan-approval Compliance Inspections (CI). To illustrate how far we have come in this regard, in FY2013, the Department had completed only a singular compliance inspection. In FY2017, the Department conducted 1,569 such inspections.

### **Enhanced Risk Tiering Methodology and Chemical Security Assessment Tool (CSAT)**

#### **Version 2.0**

In the fall of 2016, the Department launched an enhanced risk-assessment and tiering methodology that appropriately accounts for all elements of risk and addresses statutory requirements laid out in the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014*. The result of 3 years of work by DHS risk experts, the methodology has benefited from and has been informed by analysis and input from a panel of external experts from industry, government, and academia. Sandia National Laboratories has also performed an independent verification and validation.

The enhanced tiering methodology uses a scientifically supported approach to calculate each facility's risk as a function of information related to terrorist threat, the facility's inherent vulnerabilities, and the potential consequences of a terrorist attack. Enhancements include the addition of physics-based models for chemicals that could be taken offsite and used in an attack, updates to the threat model informed by intelligence, and improvements to the population modeling for release facilities. We believe that these changes make this methodology a more accurate reflection of a facility's risk.

All facilities with holdings of chemicals of interest are required to resubmit information and are being assessed using the new methodology. To date, nearly all 28,000 facilities that had previously reported holdings of chemicals of interest at the screening threshold quantity have submitted a revised Top-Screen. All Top-Screens receive an eyes-on quality assurance review to ensure the data reported makes sense for the type of chemical and facility reporting. In cases where there are concerns with the data reported, ISCD contacts the facility for clarifications. When necessary, the facility is asked to make corrections to appropriately reflect the data. DHS began issuing tiering determination letters using the enhanced methodology on April 4, 2017. We anticipate that we will have tiered the entire current population of chemical facilities of interest using the new methodology by October 2018. The Department expected shifts in tiers and originally analyzed over 8,000 Top-Screens to identify the projected movements. Now that DHS has received almost all revised Top-Screens it completed analysis on those facilities and saw a shift in the populations as follows:

- All facilities that were high-risk (Tier 1-4) prior to CSAT 2.0 have been notified of their revised tier.

- Approximately 36% of the previous high-risk population remained at the same Tier
- Approximately 48% of the previous high-risk population moved from one tier to another tier
- Approximately 15% of the previous high-risk population has been determined not to be high-risk
- Approximately 4% of the previous not high-risk population has been determined to be high-risk

In concert with the retiering effort, the Department also deployed CSAT 2.0, a streamlined, user-friendly update to its online portal and Top-Screen, Security Vulnerability Assessment (SVA), and an SSP suite of online reporting tools. The CSAT 2.0 Top-Screen collects the data necessary to process facilities through the enhanced tiering engine and improves the integration between the CSAT SVA application and the CSAT SSP application, which has resulted in a dramatically simplified experience for facilities when submitting Top-Screens, SVAs, and SSPs.

As an example, under the previous format, completing a Top-Screen was estimated to take just over 11 hours, the current format has reduced that to just 6 hours. In addition, building upon lessons learned over the life of the program, the Department reduced the number of questions on the Security Vulnerability Analysis from approximately 600 to 10 while the new Site Security Plan has less than one-third of the questions than the previous iteration.

#### **Personnel Surety Program**

Vetting those who have access to chemicals of interest and other sensitive parts of high-risk chemical facilities is a key aspect of facility security. Under RBPS 12, Personnel Surety,

facilities must implement (1) measures to verify and validate identity, (2) check criminal history, (3) validate legal authorization to work in the United States, and (4) identify people with terrorist ties. While all tier 1 through 4 facilities have been implementing the first three elements of RPBS 12, the Department began working with Tier 1 and Tier 2 facilities to implement the fourth element in December 2015 after the Office of Management and Budget approved the Department's Information Collection Request for the CFATS Personnel Surety Program (RPBS 12(iv)).

This approval closed a critical gap in security plans by allowing facilities in these two tiers to submit names to DHS for vetting individuals' potential terrorist ties. Going forward, the Department is planning on expanding its implementation to tiers 3 and 4. The Department is in the process of requesting approval, through the Paperwork Reduction Act (PRA) process, to collect information about individuals with/or seeking access to high-risk chemical facilities for all four Tiers. In anticipation of this request, the Department published a 60-day notice in December of 2017 and will be publishing a 30-day notice soon.

#### **The Road Ahead and Reauthorization**

Four years ago, I came before the Committee, outlined the improvements we had made so far, and assured the Members that we were moving forward strategically to address the challenges that remained. Today, I am proud to say that we have made good on that assurance. In 4 years we have:

- Dramatically improved the pace of inspections, reviews, and approvals resulting in the elimination of a backlog once projected to take 7 to 9 years to clear, nearly 6 years ahead of schedule.

- Developed and deployed an enhanced risk-tiering methodology that is scientifically based; vetted by external experts from across industry, government, and academia; and a more accurate reflection of a facility's risk.
- Streamlined the SSP development process reducing the burden on facility operators without sacrificing security through the launch of CSAT 2.0.
- Closed a critical gap in the security plans of our nation's highest risk facilities through the implementation of the Personnel Surety Program (screening for terrorist ties).

In addition, the Department continues to make outreach to its various stakeholder communities a top priority particularly to first responders and emergency managers. By end of fiscal year 2017, DHS conducted nationwide outreach with more than 1000 State and local offices and 1400 Local/Tribal Emergency Planning Committees in 50 U.S. states, District of Columbia, and 9 U.S. territories. Specifically, the Department reported contacts with nearly all State Offices of the Homeland Security Advisor, First Responder/Manager, Fire Marshal, Public Safety, and plans to continue these meetings annually. Further, the Department regularly participates and presents at SERC/TERC meetings, Area Maritime Security Meetings, and HAZMAT conferences.

The Department prioritizes engagement with LEPCs/TEPCs based on the existence of CFATS covered facilities in their counties as well as their level of activity. Further, DHS works to build relationships with less robust LEPCs/TEPCs to create future opportunities for providing presentations/briefings on CFATS program requirements and resources.

Also, outreach to first responders is incorporated into the development of site security plans through Risk Based Performance Standard 9 (RBPS 9) - Response. This standard requires covered facilities to have a documented, comprehensive crisis management plan that details how the facility will respond to security incidents and requires that the facility run exercises and drills to improve its ability to implement these provisions. DHS verifies this outreach during on-site compliance inspections. In many instances, the Department has facilitated contact between the first responders and the facilities.

### **Conclusion**

Indeed, we have accomplished much since 2014. A lot of it is due, as I noted earlier, to the collective efforts of many individuals and institutions, and especially the leadership of Congress. It would be accurate to say that much of what we have been able to do in 4 years is attributable to Congress taking action and passing the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014*.

Until the passage of that legislation, the program had been authorized on a yearly basis through the appropriations process. Enacting a multi-year CFATS authorization:

- Provided industry stakeholders with the certainty they needed to plan for and invest in CFATS-related security measures to harden their critical sites against possible terrorist attack or exploitation;
- Allowed the Department to make strategic, long-term planning decisions regarding staffing, program development, and process efficiency; and
- Sent a clear message to potentially regulated facilities storing threshold quantities of dangerous chemicals that the CFATS Program is here to stay.

With long-term authorization, chemical facilities of interest have become further incentivized to engage with the Department with regard to facility security and are deterred from ignoring CFATS obligations in hopes that the program will be allowed to expire.

As we are all too aware, we live in a dynamic threat environment and the threat of a terrorist attack using chemicals is as relevant today as it was when CFATS was first created. We continue to see terrorists seeking out and using chemicals of the sort regulated under CFATS. We need look no further than events which have taken place in Belgium, Syria, France, and the United Kingdom and the continuing threat stream to know that this is not a time to stop addressing the security threat posed by chemicals.

Chemical security is very much a pressing need and reauthorization for the CFATS Program is a major step toward meeting it. I look forward to working with each of you to chart a path forward for this critical national security program that includes reauthorization. I thank the Members of this Subcommittee and look forward to your questions.



**Chemical Facilities Anti-Terrorism Standards (CFATS) Roundtable Discussion  
June 12, 2018**

**Key GAO Reports, Findings, and Recommendations (2013-2017)**

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*Summary: Since 2013, GAO has issued several reports reviewing various aspects of the Department of Homeland Security's (DHS's) Chemical Facilities Anti-Terrorism Standards (CFATS) program. These reports have identified challenges DHS has faced in implementing and managing the CFATS program in various areas, including:*

- 1) *the process for assessing chemical facility risk and placing these facilities into risk-based tiers;*
- 2) *ensuring chemical facility compliance with CFATS regulations and measuring program performance;*
- 3) *efforts to outreach and share information with chemical facilities; and*
- 4) *establishing a process to obtain and investigate whistleblower complaints.*

*GAO has made 10 recommendations to strengthen the program across these areas. DHS agreed with all of these recommendations and as of June 2018, has fully implemented 6 of them and is taking action to address the remaining 4. Further, GAO is currently assessing additional aspects of the program for this Committee and plans to report later this summer.*

**1. Chemical facility risk assessment approach and tiering methodology**

In 2013, GAO found that between 2007 and 2013, DHS had placed about 3,500 high-risk chemical facilities to risk-based tiers under its CFATS program, but it had not fully assessed its approach for doing so. The approach DHS used to assess risk and make decisions to place facilities in final tiers did not consider all of the elements of consequence, threat, and vulnerability associated with a terrorist attack involving certain chemicals. GAO also found in 2015 that DHS used self-reported and unverified data to determine the risk categorization for facilities that held toxic chemicals that could threaten surrounding communities if released.

- **Recommendation:** GAO recommended that DHS develop a plan, with timeframes and milestones, that incorporates the results of the various efforts to fully address each of the components of risk and take associated actions where appropriate to enhance its risk assessment approach.<sup>1</sup>

**Status: Not Fully Implemented:** From 2013 through 2016, DHS conducted a multi-year effort to review and update the CFATS program's risk assessment approach, which incorporates improvements based on recommendations from an external peer review and GAO. GAO is currently evaluating these efforts as part of our ongoing work and will report later this Summer.

<sup>1</sup>GAO, *Critical Infrastructure Protection: DHS Efforts to Assess Chemical Security Risk and Gather Feedback on Facility Outreach Can Be Strengthened*, GAO-13-353 (Washington, D.C.: Apr. 5, 2013).

- Recommendation:** GAO recommended that DHS conduct an independent peer review, after it completes enhancements to its risk assessment approach, that fully validates and verifies its risk assessment approach consistent with prior recommendations of the National Research Council of the National Academies.<sup>2</sup>

**Status: Not Fully Implemented:** DHS worked with Sandia National Laboratories to conduct an independent verification and validation of the CFATS program's revised risk assessment methodology, which was completed in January 2017. GAO is currently evaluating these efforts as part of our ongoing work and will report later this Summer.
- Recommendation:** To ensure the accuracy of the data submitted by chemical facilities, GAO recommended that DHS provide milestone dates and a timeline for implementation of the new process for placing chemical facilities into risk-based tiers and ensure that changes to this process mitigate errors in data submitted by facilities.<sup>3</sup>

**Status: Implemented:** In January 2016, DHS developed milestone dates for implementing an updated process and stated that this new process will no longer rely on facilities to provide certain unverified data. Rather, DHS will begin calculating this data itself to enable better assessment of risk.
- Recommendation:** To ensure the accuracy of the data submitted by chemical facilities, GAO recommended that DHS identify potentially miscategorized facilities with the potential to cause the greatest harm and verify the data these facilities report is accurate.<sup>4</sup>

**Status: Implemented:** As of May 2017, DHS completed an assessment of potentially miscategorized facilities. Also, DHS's updated process, launched in October 2016, no longer relies on facilities to provide certain unverified data; rather, DHS is to calculate this data itself to enable better assessment of risk.

## 2. Facility Compliance and Performance Measurement

In 2015, GAO found that DHS has made substantial progress approving chemical facility security plans but did not have documented processes and procedures for ensuring facilities that are noncompliant with their approved security plans are taking actions to implement planned measures. Further, DHS's performance measure for the CFATS program did not solely capture security measures that were implemented by facilities and verified by ISCD; rather, the measure reflected both existing security measures and planned security measures that facilities had not yet implemented.

- Recommendation:** To better manage compliance among high-risk chemical facilities and demonstrate program results, GAO recommended that DHS develop documented processes and procedures to track noncompliant facilities and ensure they implement planned measures as outlined in their approved security plans.<sup>5</sup>

**Status: Not Fully Implemented:** According to DHS officials, the agency is nearing finalization of documentation of the processes and procedures being used to track noncompliant facilities and ensure they implement planned measures as outlined in their

<sup>2</sup>GAO-13-353.

<sup>3</sup>GAO, *Critical Infrastructure Protection: DHS Action Needed to Verify Some Chemical Facility Information and Manage Compliance Process*, GAO-15-614 (Washington, D.C., July 22, 2015).

<sup>4</sup>GAO-15-614.

<sup>5</sup>GAO-15-614.

approved site security plans. GAO is currently evaluating these efforts as part of our ongoing work and will report later this Summer.

- **Recommendation:** To better manage compliance among high-risk chemical facilities and demonstrate program results, GAO recommended that DHS improve the measurement and reporting of the CFATS program performance by developing a performance measure that includes only planned measures that have been implemented and verified.<sup>6</sup>

**Status: Implemented:** In December 2015, DHS implemented a new process whereby DHS inspectors verify that facilities implement planned measures during compliance inspections or other means before inclusion in the performance measure calculation.

### 3. Program outreach and information-sharing

In 2013, GAO found that DHS solicited informal feedback from chemical facility owners and operators on its efforts to communicate and work with them, but it did not have an approach for obtaining systematic feedback on its outreach activities. Additionally, GAO reported in 2014 that, based on a review of state data and records, there were more chemical facilities with ammonium nitrate holdings than those that reported to DHS under the CFATS program and that, therefore, some facilities that were required to report may have failed to do so.

- **Recommendation:** To enhance DHS's efforts to communicate and work with facilities, GAO recommended that the agency explore opportunities and take action to systematically solicit and document feedback on facility outreach.<sup>7</sup>

**Status: Implemented:** DHS developed a questionnaire to solicit feedback on outreach with facilities and industry stakeholders in the CFATS community. DHS started using the questionnaire in October 2016 during various CFATS outreach events to obtain stakeholder input and data.

- **Recommendation:** To improve federal oversight of facilities with ammonium nitrate, GAO recommended that the Department of Labor, the Environmental Protection Agency (EPA), and DHS develop and implement methods for improving data sharing among federal agencies and with states.<sup>8</sup>

**Status: Implemented:** DHS and EPA developed various mechanisms to better share data related to chemical facilities, which has enabled DHS to better identify facilities that are potentially non-compliant with CFATS.

### 4. Whistleblower reporting process

In 2015, GAO found that DHS implemented an interim process to respond to whistleblower reports involving CFATS and has followed its process since then; however, DHS did not have a documented process and procedures to investigate whistleblower retaliation reports. GAO also found that DHS's telephone tip line and whistleblower website provide limited guidance about the type of information that would be most useful to DHS for addressing the reports.

<sup>6</sup>GAO-15-614.

<sup>7</sup>GAO-13-353.

<sup>8</sup>GAO, *Chemical Safety: Actions Needed to Improve Federal Oversight of Facilities with Ammonium Nitrate*, GAO-14-274 (Washington, D.C.: May 19, 2014).

- **Recommendation:** To help ensure that whistleblower retaliation reports are addressed efficiently and effectively, GAO recommended that DHS develop a documented process and procedures to address and investigate whistleblower retaliation reports that could include recommended practices, such as those established by the Department of Labor's Occupational Safety and Health Administration.<sup>9</sup>  
**Status: Not Fully Implemented:** DHS officials reported that a standard operating procedure for addressing and investigating whistleblower retaliation complaints was developed and is expected to be approved in Spring 2018 and subsequently provided to GAO for review.
- **Recommendation:** To assist DHS in collecting the information needed to investigate whistleblower reports and make informed decisions, GAO recommended that DHS provide additional guidance on the ISCD whistleblower website and telephone tip line greeting to clearly communicate the information needed in the reports.<sup>10</sup>  
**Status: Implemented:** As of December 2016, DHS had provided additional guidance on its whistleblower website and telephone tip line greeting to clarify the types of information that would be helpful for whistleblowers to provide to DHS.

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<sup>9</sup>GAO, *Critical Infrastructure Protection: Improvements Needed for DHS's Chemical Facility Whistleblower Report Process*, GAO-16-572 (Washington, D.C.: Jul 12, 2016).

<sup>10</sup>GAO-16-572.

**Written Statement On CFATS**

Jesse (Jay) LeGros Jr.  
Chemical Security Inspector

Good Morning Chairman Johnson, Ranking Member McCaskill, members of the Committee and fellow roundtable attendees. My name is Jesse LeGros Jr. and I am the Acting Vice President of Infrastructure Protection Personnel of American Federation of Governmental Employees (AFGE) Local 918. I am also a Chemical Security Inspector(CSI) with the Infrastructure Security Compliance Division(ISCSD) within the Department of Homeland Security. I also worked in a law enforcement capacity with the Federal Protective Service. We help protect our nations chemical facilities under the Chemical Facility Anti-Terrorism Standards (CFATS) program. On behalf of my fellow union members and Chemical Inspectors, I would like to thank you for this opportunity to speak to you today.

**CFATS Inspector Training:**

I was in the first formal inspector academy class. This class was one-month long. Some of the later classes were two months and my understanding there was at least one that was three months. I am not sure as to when the last academy class was. Mostly all training today is acquired on the job. Our profession and mission is unique. I'm not sure that an academy class for Chemical Security Inspectors (CSI's) is necessarily warranted but they had been formally provided in the past. Since our controlling regulation is primarily focused on the physical security of the Chemicals of Interest (COI), formal and specialized training on physical security measures should be required. The Federal Protective Service has an excellent physical security class at the Federal Law Enforcement Training Center (FLETC) and that would be a perfect place to start. We have hired a number of individuals with little to no physical security training or experience. These particular skills cannot be learned strictly by doing it under on-the-job (OTJ) training. It can be a challenge to try to perform complex assignments concerning physical security measures and practices without having received consistent, structured and formal academy-based training. Trying to learn or teach these skills during an inspection is imprudent and can distract from the quality of the inspection. There is a lot of pressure on CSIs to perform these scheduled inspections and to timely file reports within the program deadlines. As is often the case in governmental inspectional operations, those reports filing deadlines tend to become the dominant influence and control over the process itself. In some cases that pressure can result in reduced quality or comprehensiveness resulting in the reports being of less than maximum or optimal value. If all CSIs were fully and consistently academy trained, then there would be less distraction from mission and product that currently results from inspectors trying to learn on the job.

**Cybersecurity Training:**

The agency does not provide any cyber security training as they claim. I have attended two "Cyber Training" classes. One was at Idaho National Laboratory, in Idaho. This class was about Hackers and how they can access cyber systems. The other was in Washington D.C. This is considered the Cyber Training class for all inspectors to enable them to do the cyber section or our reports. The class content was primarily related to providing instructions as to how to fill out

the cyber section of an Authorization Inspection(AI) Report. This class did not get into the various technical aspects of the Cyber world or Cyber Security. At the time I took the class, we weren't even doing AI's, we had moved on to Compliance Inspections (CI's). We have had numerous webinars involving cyber, but these were all geared on filling out an inspection report and not on analysis, understanding, or protecting cyber systems. The agency claims that it has qualified inspectors in our ranks that have cyber training and experience. However, there is no list of these qualified and trained specialist accessible to a lead inspector when it comes to scheduling an Inspection. The lack of such a roster make it difficult for an inspector to schedule the participation of another inspector -- trained in cyber security related to -- to participate in the field assessment process. The absence of such a resource makes it difficult to accomplish this element of the program. Some inspectors pursue knowledge or training in this subject area on their own. If CSIs are to continue performing this increasingly critical function, then formal academy and in-service training should be put in place. I talked to one inspector who has a lot more cyber training than most. He advised that all of the classes that he has taken besides the two stated were taken on his own initiative and were not assigned by the agency. The agency has three cyber integration levels that can be assigned to a facility, Minimal, Partial and Significant. A Minimal can be done by any inspector. A Partial is done by an inspector with cyber training. A Significant would be done by a cyber SME from HQ. In January 2013 we were directed that for a minimal we only had to answer four questions:

1. Does the facility have cyber security policies?
2. Does the facility provide cyber training to users?
3. Is there a vulnerability to the facilities ability to thwart a diversion in a holistic review of all security measures?
4. Has the facility taken credit for all security measures to mitigate cyber vulnerabilities?

In March of this year, I was advised by my Chief of Regulatory Compliance (CRC) that we would be filling out all cyber questions within the reports no matter what the designation was. The union then reached out to the Field Operations Branch Chief (FOBC) to verify if this was correct. We were told that was not true but sent us a new Authorization Inspection Report Amplification Guidance document. Under the cyber section it states that if a team lead feels that a Significant facility is outside their ability they can request the support of a cyber SME, but based on need, the Compliance Branch Chief will make the recommendation as to whether a CSI, CSI with additional training, or a cyber SME will be used to perform the RBPS 8 section of the inspection. This results in too much subjectivity and reduced consistency in the application of these discretions. The union has been having numerous discussions with the FOBC about our concerns that this does not say that we do not have to answer all the questions and that they are changing significant from being done by an HQ cyber SME to an inspector. They insist that it does not, but the wording clearly says it. In one conversation the FOBC stated that he felt our complaint was more about the process than the guidance document. That the guidance document only reflects the process and that we should approve the document and then argue about the process. I advised him that if we approve the guidance document then we would be approving the process and that was not acceptable.

CSIs understand the importance of Cyber and Cyber Security. In order for us to do our job with due diligence, ISCD needs to provide the proper training on cyber and cyber security.

The employees that are trained to deal with cyber and cyber security at facilities all have certifications and degrees in those fields. We must make certifications in cyber and cyber security a minimum requirement for proper training to efficiently enforce the regulation.

Regarding the CFATS regulation, it is a valuable and important regulation and needs to be reauthorized. We have made great strides in helping protect and securing Chemicals of Interest and facilities under this regulation. Especially the ones that have no security background or understanding. This regulation has brought a more security minded thinking approach to numerous facilities. We have made some valuable contacts because of the regulation. A good example is that a non CFATS site was being flooded and was on the verge of a catastrophic situation. The facility was unable to make contact with the local first responders. The facility's corporate security officer was able to contact a CI, who was able to relay the information to the applicable emergency management and first responders. The first responders were able to contact the affected facility and provide the needed assistance and evacuations. This lowered the risk and could have possibly saved lives. There should be greater deployment and use of CSIs as members of emergency and contingency planning groups for response to undesirable events affecting sites of interest. But there are some issues with the regulation:

1. It regularly needs congressional reauthorization. It needs to a free-standing regulation with no further reauthorizations needed.
2. Background checks. The regulation says a facility must perform appropriate background checks, but it doesn't say what they consist of. This is one of the areas that must be clarified. The keeping and maintaining of these background checks needs to be part of the record keeping requirements. Within the current regulation the facility has no legal requirement to keep them for us to verify. Some facilities even dispose of the background check results leaving no proof that one was done.

#### CFATS Program:

CFATS program duties are routinely expanded and pushed down for the inspectors to do. CSIs started out doing inspections. Then they were assigned to do Post Inspection Reports (these were previously done by an analyst at HQ). Now we are doing CIs. Several months ago, they were tasked to do more outreach, a lot of which was being done before doing inspections. This outreach does not include Compliance Assistance Visits (CAV's) and Potential Non-Compliant Facility (PNCF) tasking/visits. CSIs are only given 12 days to complete AI and CI reports and 5 days to do a CAV or PNCF. This would be manageable if only one inspection were in progress at a time and if there were no other administrative distraction. These goals become problematic to accomplish when multiple inspections are conducted simultaneously. Outreach such as attendance at a Local Emergency Planning Committee (LEPC) or some other similar activity is hard to accomplish with the limited available time. Reports must be timely filed. Field time is further limited by the need to conduct exhaustive pre-inspection paperwork review of varying type and sensitivity (Top Screen, SVA/SSP, AIR, CIR (depending on the inspection)) for an upcoming inspection. If an inspection is scheduled for a Tuesday and Thursday, the CSI would not be able to start the report for the Tuesday inspection until Friday (Wednesday would be used to prepare for the inspection on Thursday). Two days to work on the report. If they're lucky, they will finish the report on that Monday. Thursdays report won't be started until Tuesday, assuming they don't have an inspection on that Tuesday. You

also must include travel days if the facility is not local and holidays. Due to the F1 issue (whatever that was) and the infamous "Letter to Fox News" that claimed the inspectors weren't doing inspections, HQ is so focused on the number of inspections that they do not care that the time frame given to them to complete everything is unreasonable. It appears as if they are more concerned with reporting to Congress the number of inspections completed than provide them with sufficient staffing and training resources needed to provide the quality reports required for national security.

This concludes my statement. I will be happy to answer any questions that you may have on the CFATS regulation or program.





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Statement

*of*

Jennifer C. Gibson  
Vice President, Regulatory Affairs

*on behalf of the*

National Association of Chemical Distributors

*before the*

U.S. Senate  
Committee on Homeland Security and Governmental Affairs

*on*

The Chemical Facility Anti-Terrorism Standards

June 12, 2018

Good morning, Chairman Johnson, Ranking Member McCaskill, and other distinguished committee members. My name is Jennifer Gibson, and I am vice president of regulatory affairs for the National Association of Chemical Distributors (NACD). On behalf of NACD, I am pleased to participate in this important roundtable and to provide this statement on the Chemical Facility Anti-Terrorism Standards (CFATS) program.

#### About NACD

NACD is an international association of nearly 440 chemical distributors and their supply-chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 93 percent of the industry's gross revenue. NACD members, operating in all 50 states through more than 2,800 facilities, are responsible for nearly 130,000 direct and indirect jobs in the United States. NACD members formulate, blend, re-package, warehouse, transport, and market the chemicals produced by manufacturers to 750,000 end users in nearly every industry sector, including:

Aerospace	Metal Finishing
Agriculture	Paints and Coatings
Automotive	Pharmaceuticals
Cosmetics	Plastics
Detergents	Pulp and Paper
Electronics	Steel
Energy	Transportation
Food Ingredients	Water Treatment
Fragrances	And More

While chemical distribution is big business, NACD members are predominantly small regional companies, many of which are multi-generational and family owned. The typical NACD distributor member has \$26 million in annual sales, three facilities, and 26 employees.

#### NACD Responsible Distribution®

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD

members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

While security has always been an inherent element of Responsible Distribution, following the terrorist attacks of September 11, 2001, distributors were the first sector of the chemical industry to mandate security measures for its members. NACD continues to assess Responsible Distribution's security measures against current threats. In 2013, NACD added a specific Security Code to Responsible Distribution that consolidated many prior requirements and enhanced others. These security requirements apply to all NACD members, including those who do not have facilities subject to the CFATS regulations. Over the past 16 years, NACD members — both CFATS-regulated and non-CFATS-regulated companies — have made substantial investments to make their facilities more secure.

#### NACD Supports Long-Term Reauthorization of CFATS

NACD strongly supports a long-term reauthorization of CFATS. The CFATS program has made the chemical industry and our nation much more secure. Since its establishment in 2007, the industry has invested millions of dollars and instituted thousands of new security measures. While these resources have not gone directly towards growing chemical distributors' businesses, NACD members recognize and appreciate the importance of making their companies, employees, and communities more secure.

#### **A Collaborative Approach Has Led to Success**

From the beginning, the Department of Homeland Security (DHS) has taken a collaborative, commonsense approach in implementing the CFATS regulations. Despite being dependent on temporary appropriations measures during the first seven years of the program, the agency did a commendable job in writing the regulations and setting up the internal infrastructure to be able to implement and enforce the new standards. While there were some growing pains in the first few years, by listening to and learning about industry DHS was able to use this information to make improvements to run the CFATS program more efficiently.

One reason for the success of the CFATS program is the fact that DHS has taken the time to truly learn about the diverse chemical industry and work with companies on security measures that meet the CFATS Risk Based Performance Standards while providing flexibility to

each unique chemical facility in doing so. DHS has excelled in outreach to the industry by publishing numerous fact sheets and “lessons learned” documents; interacting with facility owners and operators during the Chemical Sector Security Summits and other industry meetings; and always making inspectors and headquarters personnel available to talk through issues and answer questions. DHS has spoken at numerous NACD meetings over the years to make sure our members were aware of the latest CFATS developments and lessons learned.

In addition, DHS worked with NACD and the American Chemistry Council (ACC) to develop a CFATS Alternative Security Program (ASP) Guidance Document and Template to enhance the process for submitting site security plans. The ASP provides DHS with greater clarity about regulated facilities’ security measures and how they meet or exceed CFATS requirements, while simplifying the compliance process and giving facility owners and operators a comprehensive security document to follow.

#### **The Diverse World of Chemical Facilities - Ensuring Different Industries Are Aware of CFATS Obligations**

Following the tragic 2013 West Fertilizer fire and explosion, DHS doubled down on efforts to reach “outliers,” those facilities that may not be aware of their obligations to inform the agency about their possession of chemicals of interest (COI) by filing Top Screens. Because NACD members sell COI to so many diverse industries, the association agreed to assist DHS with this effort by sharing CFATS information with these customers. NACD worked with the agency to create a special flyer to inform members’ customers about CFATS, their obligation to file Top Screens if receiving threshold quantities of COI, and information on how to start the process.

#### **Regulatory Certainty Needed for Efficiency**

The “Protecting and Securing Chemical Facilities from Terrorist Attacks Act” of 2014 (P.L. 113-254), which for the first time provided CFATS a multi-year authorization, further enhanced security efforts by providing regulatory certainty to both industry and DHS. This stability allowed DHS to increase efficiencies in the program while streamlining the information submission process for regulated facilities.

For example, in 2016, DHS rolled out an enhanced risk tiering methodology to identify more accurately high-risk facilities and assign them to appropriate risk tiers. DHS notified all

facilities with threshold quantities of CFATS chemicals of interest that they must submit new Top Screen surveys to the agency. At the same time, the agency launched version 2.0 of the Chemical Security Assessment Tool (CSAT 2.0), the online portal facilities use to submit Top Screens, Security Vulnerability Assessments, and Site Security Plans/ASPs. CSAT 2.0 is much more streamlined and user friendly than the old version. The updated version allows facilities to submit their information and DHS to analyze the material more efficiently. DHS completed the re-tiering process in a timely and efficient manner and is now conducting authorization inspections and compliance inspections for facilities assigned to different tiers as well as newly regulated facilities.

#### **CFATS Going Forward**

NACD believes the CFATS program is strong and needs minimal change other than a multi-year reauthorization. One NACD priority is to make sure any changes to the Appendix A list of chemicals remain subject to notice and comment rulemaking. Changes to this COI list have major impacts on many companies' businesses and security investments. While changes may periodically be needed, it is important to give the regulated community the opportunity to provide information and explain the impacts of any proposed changes.

NACD also supports the creation of a program under which DHS would recognize companies that meet certain criteria such as participation in an environmental, health, safety, and security program such as Responsible Distribution. Several state governments, including Indiana, Illinois, Michigan, and Ohio, have officially recognized Responsible Distribution. NACD members have made a strong commitment to operate their facilities safely and securely through Responsible Distribution. Recognizing these companies through measures such as less frequent inspections would allow DHS to prioritize resources to concentrate on the "outliers" or bad actors that may pose a greater security risk.

#### **Conclusion**

NACD supports the CFATS program and looks forward to working with the committee on legislation to reauthorize this important security regulation in the coming weeks and months. A multi-year reauthorization of CFATS would provide needed certainty and further enhance the security of chemical facilities and our nation.

On behalf of NACD, I appreciate this opportunity to present the association's views on this important issue. I look forward to your questions.



*Delivering Solutions through Chemistry*

Statement

*of*

Randall J. Eppli  
President and CEO

Columbus Chemical Industries, Inc.

*before the*

U.S. Senate  
Committee on Homeland Security and Governmental Affairs

*on*

The Chemical Facility Anti-Terrorism Standards

June 12, 2018





*Delivering Solutions through Chemistry*

Good Morning, Chairman Johnson, Ranking Member McCaskill, and distinguished members of the Committee. My name is Randall Eppli, and I am president and CEO of Columbus Chemical Industries, Inc. (CCI), a chemical distribution company headquartered in Columbus, Wisconsin. I want to thank you for allowing me to participate in this important roundtable and am pleased to provide input on the Chemical Facility Anti-Terrorism Standards (CFATS) program.

#### About Columbus Chemical Industries, Inc. (CCI).

Columbus Chemical Industries is a 40-year-old, family owned manufacturer and distributor of specialty performance chemical solutions for numerous industries including Semiconductor wafer chip production, medical device manufacturing, pharmaceutical production and for various industrial applications. CCI's 70-person team serves customers throughout North America, Europe and Asia from its facilities in Columbus, Wisconsin and Phoenix, Arizona.

CCI has been an active member of the National Association of Chemical Distributors (NACD) for 25 years. NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. NACD added a specific Security Code, which encompasses many CFATS regulations, to Responsible Distribution that consolidated many prior security requirements and enhanced others. These requirements apply to all NACD members, including those who do not have facilities subject to CFATS.

#### Columbus Chemical Industries, Inc. Supports Long-Term Reauthorization of CFATS

CCI supports a long-term reauthorization of CFATS. I believe the CFATS program has made the chemical industry and our nation much more secure. Since the program's establishment in 2007, the industry has invested significant capital and training resources towards enhanced or augmented security measures at our facilities. While these resources did not necessarily assist in growing business, they were nonetheless important to ensure the security of my company, our employees, and the community.

#### **The Need for CFATS in Light of Threat Environment**

Evaluating and enhancing our security procedures based on the input of the experienced Department of Homeland Security (DHS) personnel has undoubtedly been beneficial to my company. However, I do believe it is possible the program could be administered with less of an administrative and financial burden on industry, especially small businesses.

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While it is true that in the program's first few years there were some growing pains, DHS was able to make improvements to run the CFATS program more efficiently by listening to those in chemical distribution. Many of the objectives of the Risk Based Performance Standards (RBPS) are already integral to the operations of the chemical industry, including complying with other regulatory agencies (such as the Drug Enforcement Administration), industry association standards (such as NACD Responsible Distribution®), insurance recommendations, and experience with good chemical management practices. However, there are still areas in which DHS could improve, such as clarifying what chemical facilities are expected to do in response to announced increased threat levels. The ongoing supply of chemicals and associated services is critical in times of emergency, therefore simply ceasing operations is not a viable option for businesses during times of higher risk.

#### Overall Experience with the CFATS Process Through DHS

From the beginning, DHS generally took a non-adversarial, consultative, and reasonable approach in implementing the CFATS regulations. Examples include achieving the intent of the RBPS, and the preparation of Site Security Plans (SSPs) and Alternate Security Plans (ASPs). That same approach has remained throughout the entirety of the program. While the initial process was burdened with cumbersome, confusing, and inefficient paperwork, this aspect of the program has improved over time. However, it should be noted that the process for SSP and ASP revisions and updates remains challenging for distributors. This is something we are anxious to continue to work with DHS to resolve.

It has been our experience that DHS staff, in both the field and at headquarters, have generally been knowledgeable, professional, and courteous. Additionally, DHS typically arranges their site visits in advance, unlike many other government agencies.

#### Recommendations for Improving the Process

##### **Adjudication of Background Checks**

Clarification on the adjudication of background checks is needed regarding:

- Exactly what background checks are required.
- What results for new job applicants are grounds for denying employment or otherwise restricting the applicant's employment opportunities.
- If actions that employers may take regarding the results of background checks conform with government and company requirements or initiatives aimed at hiring ex-offenders, former addicts, etc.
- What actions employers are expected to take based on the results on background checks for legacy employees.



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In light of the clarifications cited above, laws need to include provisions protecting employers from liability for the actions they take, or do not take, in good faith based on the criminal background checks. The current situation is ambiguous.

#### **Recognition for Participation in Industry Program**

I support the consideration of incorporating, in whole or in part, verified industry-standard programs, such as NACD Responsible Distribution®, into the evaluation of whether a facility has met the intent of the applicable RBPS. NACD members and others, such as ACC members who participate in Responsible Care, have made a strong commitment to operate their facilities safely and securely. Recognizing these responsible companies through simple measures like less frequent inspections would allow DHS to prioritize resources to concentrate on the “outliers” or bad actors who don’t participate in these programs that may pose a greater security risk to themselves or the population at large.

#### **Simplification of the Change Process**

To simplify the process of making non-substantive revisions, I recommend allowing the designated company to directly access their SSPs and ASPs to revise items such as personnel assignments, titles, phone numbers, etc. Doing so will reduce the burden and time companies and their employees spend contacting DHS personnel to make these minor edits.

While calls and emails placed to DHS’s CFATS helpline regarding changes to SSPs and ASPs are generally acknowledged quickly, responses to these questions can sometimes take considerably longer and may be too ambiguous to be useful. A quicker response rate and clear guidance by DHS personnel in answering inquiries would ensure timely and accurate solutions for regulated companies. Rapid and frequent changes in product offerings, procurement, and inventory are core to the business of many chemical distribution companies. Prompt accommodation regarding DHS documents is needed for new Chemicals of Interest (COI) or newly increased Screening Threshold Quantities (STQ) for existing COI. In most cases the existing facility infrastructure and procedures will suffice for meeting the intent of the RBPS.

#### **Cybersecurity Requirements**

CCI takes a comprehensive, broad-spectrum approach to securing our chemicals from cyber-attacks. We have found these defenses cannot be purely electronic based. Some of our cyber vulnerability controls are cyber in nature, while others are designed to address some of the potential vulnerabilities inherent in increasingly autonomous cyber business procedures.

Although our order receipt/processing/fulfillment/payment systems are increasingly efficient, we have intentionally incorporated “hard breaks” into the system. These hard breaks include a requirement for a minimum of two people from different departments to review the transaction and then take specific



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action to enable it to continue. A transaction cannot be consummated without direct human intervention, and the system also makes it infeasible for a single person to execute an entire transaction.

CCI maintains a near real-time ERP inventory management system (Chempax C/S™) to closely monitor physical inventory and quickly identify discrepancies. Especially for more sensitive items (DHS, DEA, TTB, etc.), the electronic inventory is periodically verified using direct physical inventory. Additionally, CCI employs a cybersecurity consultant to establish and monitor a range of proven security protocols, both system-wide and for individual users, and to conduct system and individual penetration tests.

CCI avoids circumvention of our electronic systems by not allowing cash transactions; not allowing shipments to other than pre-verified, bona-fide businesses; not allowing product pickups by anyone other than authorized commercial chemical carriers with applicable pre-clearance; maintaining close inspection of shipping papers prior to release of an order; and physical inspections of transport vehicles before they are released. All CCI personnel involved with the transaction, from customer service receiving an order to the material handlers loading a shipment into a truck, are authorized to stop the transaction if they feel anything is troublesome.

#### Duplicative Regulations with Other Regulatory Agencies

##### **Contingency and Analogous Plans**

While each agency has a particular focus and certain subject-specific nuance, multiple agencies and programs require contingency plans/procedures, which entail multiple, often duplicative elements. These include DHS (CFATS/RBPS); DOT; EPA (RCRA - hazardous waste); EPA (Risk Management Plan (RMP)); WDNR (Off-Site Facility Plan); OSHA (Process Safety Management Plan (PSM)); DEA (especially for List 1 chemicals); FDA (especially the Food Safety Modernization Act (FSMA)).

Government agencies performing compliance inspections have sometimes required separate, comprehensive contingency plans for their particular agency program, even while acknowledging that such separate plans may be redundant with other agency plans. A single master contingency plan, with appropriate sections and nuance, would be much more efficient and, more importantly, effective in meeting the intent of a contingency plan. Further, there are real security/confidentiality concerns, and inevitable jurisdictional conflicts, with multiple agency personnel delving into a chemical company's contingency plans.

Furthermore, NACD Responsible Distribution requirements also include contingency plans and procedures, with third-party verifications (audits). Insurance carriers generally require a company have a special type of contingency plan, a Business Continuity Plan (BCP). These plans are often as



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comprehensive as the contingency plans required by government agencies, and often have much more applicability and effectiveness in real-world situations.

#### Conclusion

That said, as the threat environment is long-term, so too should the authorization of the CFATS program. CCI supports CFATS and looks forward to working with the subcommittee on legislation to reauthorize this important security regulation in the coming weeks and months. A multi-year reauthorization of CFATS would provide needed certainty and enhance the security of chemical facilities and our nation. Both industry and DHS need reasonable predictability. On behalf of Columbus Chemical Industries, Inc.,

I appreciate this opportunity to present our views on this important issue. I look forward to your questions.



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**US Senate, Committee on Homeland Security and Government Affairs****Roundtable: Examining the Chemical Facility Anti-Terrorism Standards (CFATS) Program****Statement by Bill Erny on behalf of the American Chemistry Council****10:00 am June 12, 2018, SD-106 Dirksen Senate Office Building**

The American Chemistry Council (ACC) represents the major chemical producers across the United States, including a diverse set of small and medium-sized companies engaged in the business of chemistry. ACC members make and enhance products that are critical to the everyday health and welfare of our Nation. Because of our critical role in the U.S. economy, and our responsibility to employees and our communities, chemical security is a top priority for ACC and our members.

The business of chemistry is a \$768 billion enterprise and growing; providing roughly 800,000 skilled and good-paying American jobs. Today, the industry is experiencing a renaissance in the United States thanks in large part to the growth in domestic shale gas production. In fact, ACC has identified over 300 new capital investment projects currently underway across the United States, worth over \$185 billion in economic growth and adding thousands of new jobs. Ensuring that clear and workable programs such as CFATS remain in place is critical to establishing the stable regulatory environment needed that will help foster additional investments in expanding U.S. operations.

This year marks the 30th anniversary of the ACC's **Responsible Care® Program**, the leading chemical industry stewardship initiative. Shortly after 9/11, ACC added the Security Code, a comprehensive security management system. Implementation of Responsible Care and the Security Code is mandatory for all members of the ACC. The program has enjoyed great success over the years and is a terrific complement to CFATS and other safety and regulatory programs. ACC members have invested more than \$17 billion under the Security Code to further enhance their security. The Security Code has become a gold standard for the industry, is international in scope and serves as a model for regulatory programs.

ACC supports long-term reauthorization of the DHS CFATS Program. Over the past four years, DHS' efforts have had a positive impact on enhancing security at chemical facilities. Several factors have led to the recent success of CFATS, including better site inspections, improved training of DHS headquarters and inspection staff and a more streamlined authorization process. Most importantly, DHS leadership has demonstrated a commitment to working with members of the regulated community to improve implementation of the CFATS program.

While DHS has made considerable strides to improve CFATS, we have 3 major recommendations for enhancements to the program:

1. Improve Transparency in DHS risk determinations.

DHS should be more transparent with regulated facilities regarding risk tiering determinations and what actions the Agency may take to further mitigate risk. Often times the facility security director - the very person with the overall responsibility and authority

for making critical security risk management decisions for the site - is not aware of the determining factor(s) behind the assigned risk tier level;. DHS should provide a detailed explanation as to why a facility is being tiered at a certain level.

2. Eliminate the requirement for TSDB Screening at lower risk facilities.

Over the past year, DHS has been implementing the terrorist screening portion of the CFATS PSP or personnel surety program (RBPS 12(iv)) at all Tier 1 and Tier 2 high-risk facilities (around 200 sites). This process requires the facility to collect, manage and protect sensitive personal identifying information on employees and contractors and send that information to DHS for vetting against the Terrorist Screening Database (TSDB).

DHS is planning to extend this program to an additional 3,000 lower risk Tiers 3 and 4 facilities, involving tens of thousands of employees and contractors and their personal information. ACC is concerned that such an expansion of the PSP program is unnecessary and will needlessly put personal employee information at risk. ACC believes the benefit associated with TSDB vetting is simply not worth the cost or the risk. While we support TSDB vetting at high risk Tier 1 and 2 facilities, ACC recommends elimination of this requirement for lower risk Tiers 3 and 4 facilities, or could be an option for those who choose to participate.

3. Establish a CFATS Recognition Program

DHS should leverage chemical industry stewardship programs, such as ACC's Responsible Care Security Code, with the goal of further enhancing the safety and security of hazardous chemicals across the Nation. Under CFATS, DHS can provide regulatory recognition for responsible operators that demonstrate superior performance and who exceed regulatory compliance. Such a program would incentivize the implementation of existing industry stewardship programs – and the creation of new ones where necessary -- thus enhancing chemical security across the sector and beyond the universe of CFATS regulated facilities.

CFATS has helped make our industry and our communities safer and more secure. We hope that in considering long-term reauthorization of the program, this Committee will consider ACC's recommendations and supply the needed regulatory certainty and stability for companies to continue to make prudent risk management decisions and investments. ACC and its members encourage you to support this important program and take CFATS to the next level, while continuing to provide effective Congressional oversight and guidance.



**Written Remarks of**

**Justin P. Louchheim  
Director of Government Affairs  
The Fertilizer Institute**

**Senate Committee on Homeland Security and Governmental Affairs**

**Roundtable on**

***Examining the Chemical Facility Anti-Terrorism Standards Program***

**June 12, 2018**

Good morning, Chairman Johnson, Ranking Member McCaskill, and members of the Committee.

My name is Justin Louchheim. I am Director of Government Affairs for The Fertilizer Institute (TFI). TFI represents the nation's fertilizer industry, which includes companies that are engaged in all aspects of the fertilizer supply chain. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible through the use of fertilizer.

TFI represents companies that include large multi-billion dollar production facilities and thousands of small agriculture retailers, the latter of whom interact directly with American farmers. Agricultural retail facilities sell a variety of products to farmers, including fertilizers such as ammonia and ammonium nitrate, and often have just 5-10 employees at a location. Overall, the U.S. fertilizer industry generates more than \$154 billion in economic benefit annually and provides approximately 89,000 direct jobs and 406,000 indirect jobs for a total of 495,000 U.S. jobs.

Under the Chemical Facility Anti-Terrorism Standards, or CFATS program, the Department of Homeland Security identifies chemicals which present potential security concerns. Included on this list are a few fertilizers, including ammonia, ammonium nitrate, sodium nitrate and potassium nitrate.

The safe and secure handling of fertilizers is a high priority for TFI and its members. TFI and many of our members actively participate in and sponsor numerous safety initiatives,



including ResponsibleAg, TRANSCAER, and the Advanced Tank Car Collaborative Research Program.

ResponsibleAg -- which is a joint effort between TFI and the Agricultural Retailers Association -- exists to enhance compliance by agricultural retailers with a variety of federal safety, security, environmental and transportation regulations, including those administered by the Department of Homeland Security (DHS), the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA) and the Department of Transportation (DOT). Each participating facility receives a federal regulatory compliance assessment. Any noted compliance deficiencies must be corrected by the facility before it may be designated as certified under the program. The assessments are then conducted every three years.

To date, over 2,500 facilities are registered with the ResponsibleAg program, over 1,000 of these facilities have been certified, 185 auditors have been trained, and almost 2,000 audits have been completed. We are very proud of this industry-led compliance program. Periodically, we lead a tour of the training program and facility for federal and state officials. We welcome you and your staff to visit anytime.

Regarding the CFATS program, it provides a good framework to ensure chemical facilities take the appropriate steps necessary to protect themselves and the security of the communities around them. Our members support the program, recognize its importance, and we support a multi-year reauthorization of the program.

DHS has estimated that over 3,500 facilities are presently subject to the program and TFI estimates that this includes as many as 1,500 fertilizer manufacturers and agricultural retail

facilities, with retail facilities accounting for the overwhelming majority. The retail facilities are generally located in rural communities, interface directly with farmers and employ a very small number of individuals. While we are largely satisfied with the CFATS program, we believe that implementation of the program would benefit from a bit more transparency between DHS and the regulated community. For example, DHS recently completed a process for reclassifying facilities. As a result, some TFI facilities were reclassified into a higher risk classification. What was not clear to TFI members, was the underlying basis for the new categorizations. We believe this should be a more transparent effort between DHS and individual facilities, allowing for a more thorough discussion of the security risks posed by individual facilities. This could ultimately bolster the quality of site security plans. Nevertheless, the relationship between TFI members and DHS is generally very productive, and we see this as a communication issue that can be easily addressed.

Another example of the need for increased transparency is the way DHS utilizes Appendix A, the list of chemicals potentially subject to the CFATS program. TFI and its members have encountered some confusing rulemaking interpretations, particularly how the program addresses ammonium nitrate and ammonium nitrate mixtures. The uncertainty regarding which mixtures are or are not subject to CFATS has been the subject of many discussions, but has not been resolved to the satisfaction of TFI members, owing to the limited explanations received from DHS. We believe these uncertainties could be remedied through a comprehensive notice and comment rulemaking.

We are also sensitive to the way facility-specific information contained in site security plans is shared with the public. We believe the facility owner or operator should retain the discretion to determine how this information is shared.

Lastly, regarding the personnel surety program, we don't believe this obligation to check employee records against the terror screening database should be applied to those facilities in risk groups Tier 3 and Tier 4. This would be an exponential expansion of the program from the less than 200 facilities presently covered to more than 3,500. Many of the 1,500 or so agricultural retail facilities are not equipped to implement this program at this time. TFI recommends that Congress commission a study from the Government Accountability Office of the merits of expanding this program beyond the Tier 1 and Tier 2 facilities that are presently covered.

Finally, and a bit outside the scope of CFATS, is an obligation for DHS to create a track and trace program for the sale and purchase of ammonium nitrate. This decade old directive from Congress has not been implemented, and DHS last year commissioned a study by the National Academy of Sciences (NAS) to more broadly explore the use of improvised explosive chemicals and make recommendations on how they should be managed in commerce. The NAS issued a report late in 2017, identifying 28 chemicals for further consideration by DHS. One such chemical is urea ammonium nitrate, a widely used liquid fertilizer. TFI believes that this product was mischaracterized as being a high-risk concern—as it has never been used to make an explosive. TFI believes that DHS should focus their limited resources on those chemicals that have historically be used to make improvised explosive devices.

Thank you again for the opportunity to be with you all this morning. I am happy to answer any questions.

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Director of Operations, Austin Powder Company  
Before the  
Senate Committee on Homeland Security and Governmental Affairs  
June 12, 2018

Testimony of  
Linda Menendez  
Director of Operations  
Austin Powder Company

on

Examining the Chemical Facility Anti-Terrorism Standards Program  
before the

U.S. Senate Committee on Homeland Security and Governmental Affairs

June 12, 2018

Testimony of Linda Menendez  
Director of Operations, Austin Powder Company  
Before the  
Senate Committee on Homeland Security and Governmental Affairs  
June 12, 2018

Chairman Johnson, Ranking Member McCaskill, and members of the Committee, on behalf of Austin Powder Company, thank you for the opportunity to present at today's roundtable discussion regarding the reauthorization of the Department of Homeland Security's (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) program.

Austin Powder Company, headquartered in Cleveland, Ohio, is a privately-owned U.S. company founded in 1833 as an explosives manufacturer. As we celebrate our 185<sup>th</sup> anniversary, our legacy makes Austin not only the oldest explosives company in the U.S., but also the oldest in the world. Besides being a major U.S. manufacturer, Austin also performs the valuable service of blasting for its customers in mining, quarries, construction, and seismic exploration. Today, Austin Powder operates with more than 50 distribution sites holding ATF Federal licenses, employing a U.S. workforce of 1,225.

Like other IME members, Austin Powder is committed to the safety and security of our employees and the general public. We adhere to and often times exceed the regulations set forth by the Department of Transportation (DOT), the Occupational Safety and Health Administration (OSHA), the Mining Safety and Health Administration (MSHA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and, since 2007, the Department of Homeland Security (DHS), CFATS. Additionally, Austin Powder's safety and security professionals are responsible to design and implement our own business practices to ensure the reliability and integrity of our infrastructure, increase our security efforts, and address and eliminate security threats.

Every aspect of the life cycle of explosives, from acquisition to disposition, has been regulated by the ATF since the 1970's. A major revision of the Federal Explosives Regulations went into effect in 2003 to further improve the commercial explosive industry's security position. Duplicative regulation by DHS's

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CFATS program of the same products, for the same purpose, has resulted in additional compliance cost – in both time and money. Furthermore, double-regulation detracts the compliance efforts of those seeking to be confident that they understand the laws.

The first Austin Powder example that I wish to illustrate is an ATF licensed facility on leased property, [REDACTED]. It is situated in a rural area with a [REDACTED]. These magazines, [REDACTED], are constructed in accordance with requirements set forth in Subpart K of the Federal Explosives Laws and Regulations in 27 CFR 555.207, Type 1 magazines, and are described in 207(b) as “igloos”, because they have at least 24-inches of an earthmound covering top, sides and rear. The doors of these bunkers are heavy steel doors weighing as much as ½ ton. Hinges to the steel doors are welded to ensure they could not be removed by mechanical means. Air vents in the magazines are protected by reinforced steel bars and are incapable of human access. All explosives magazines are required to meet the standards set forth in Subpart K of 27 CFR 555.207 for locking mechanisms. The magazines are secured by two (2) separate locking mechanisms per door, under steel hoods. All keys used to open padlocks are strictly controlled by adherence to Austin’s Key Control Plan. The Key Control Plan is also part of this facility’s U.S. DOT Security Plan. We lease 69 bunkers in this very remote, limited access, former government facility, 62 of which are used as storage of explosives that DHS has listed on Appendix A, Chemicals of Interest (COI). All COI are shipped in to this facility; we do not manufacture COI here. We employ a third-party uniformed guard force contracted by the industrial park. There is only one authorized access point to the facility, guarded 24/7, requiring employees, visitors, and motor carriers to register and be escorted from the gate by an assigned and authorized Austin employee. The COI explosives are routinely transferred from the facility to either of two other Austin Powder ATF Federally licensed plants that manufacture high explosives. Austin Powder transports the COI from this facility with

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either our own commercial motor vehicles operated by our own professional commercial drivers or by private motor carriers holding the same operating authorities as Austin and with whom Austin has a well-established business relationship. All truck drivers transporting COI explosives are required to have a Hazardous Materials Endorsement, conforming to TSA requirements. COI shipments are point-to-point routes with no intermediate stops for loading or unloading of cargo. Austin vehicles are equipped with electronic tracking systems required by 49 CFR Part 395 and adhere to all requirements of Hazmat shippers under 49 CFR Part 173.

All COI in this facility are considered Theft/Diversion Risks under the CFATS program. Our first Top Screen submitted in 2008 resulted in the facility being “Untiered.” However, upon submitting a DHS Top Screen in 2013 (identifying additional COI) and a subsequent Security Vulnerability Assessment, DHS determined it to be a **Tier 2** high-risk facility, requiring either a Site Security Plan or an Alternative Security Program meeting the levels of performance established by the CFATS (18) “Risk Based Performance Standards (RBPS).”

In order to meet DHS’s Risk Based Performance Standards, Austin Powder made the following changes to the facility:

- Installed a fence around one of the COI magazines
- Changed locking mechanisms on all COI magazines
- Installed an Intrusion Detection System monitored 24/7
- Increased guard force security patrols
- Installed solar powered lighting in the COI magazine areas
- Installed motion detection lighting at one COI magazine
- Additional employee training

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- Additional records of training, audits, equipment maintenance

The man-hours and implementation cost for these additional security measures totaled \$325,000 with a recurrent annual expense of \$70,000 for contracted monitoring services.

In 2016, following an update to the Chemical Security Assessment Tool (CSAT), Austin Powder was again required to submit a Top Screen for this facility. After submitting the Top Screen and an updated Alternative Security Plan Document, with no significant change in COI quantities from the last Top Screen submitted, DHS determined the facility's overall tier should be lowered to a **Tier 3**. It is our understanding the updates to the CSAT program enhanced their tiering methodology, which more accurately and appropriately tiered high-risk chemical facilities. But, quite frankly, the uncertainty of the reason behind DHS's determination to lower the facilities risk does not provide me with a way to determine if our \$325,000+ spend was necessary or if the tier could change in the future.

The second ATF licensed facility is a high-explosives manufacturing plant. It is located on 2,000 acres of mostly forested land. The main gate is manned 24/7 by a guard force that conducts security patrols and escorts all visitors and motor carriers within the plant. All employees of this facility are vetted under the Federal Explosives License as an ATF Employee Possessor or Responsible Person, upon hire and upon the Federal License renewal.

Because of the inherent nature of explosives, our facility is mandated to follow certain security-related regulations under ATF, OSHA's Process Safety Management (PSM) program and Pipeline Hazardous Materials Safety Administration (PHMSA). PHMSA, for example, requires



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this facility to have and maintain a Site Security Plan, the components of which include an assessment of transportation security risks that include storage within the facility, movement of hazardous materials within the facility, movement incidental to transportation and unloading of Division 1.1 explosives. 49 CFR 172.802 directs the facility's Site Security Plan components to include Personnel Security, Unauthorized Access and Enroute Security. This one example of duplicative regulation requiring two separate Regulatory Agency security plans for the same facility demonstrates the unnecessary burden of CFATs.

COI explosives at this facility are stored in 15 separate Type 1, Type 2 and Type 5 magazines constructed in accordance with requirements set forth in Subpart K of the Federal Explosives Laws and Regulations in 27 CFR 555. The immediate areas surrounding the storage magazines are designated as "Restricted Areas" and only those employees who are authorized and assigned work duties may have access to those areas. COI removed from the magazines are immediately transferred to the various manufacturing buildings on the plant and consumed within the shift, never left unattended and properly stored when not being used.

All COI in this facility are considered Theft/Diversion Risks under the CFATS program. Diversion is defined in CFATS as the act of acquiring a product by means of deception. As our facility uses an electronic tracking device on all of its commercial motor vehicles, is required in Subpart K of the Federal Explosives Laws and Regulations to obtain a certified statement of intended use and identification to transfer product to another Federal Explosive Licensee, is required by FMCSA to have a pre-determined route plan as well as a communication plan for departure and arrival of shipments, and ships primarily to Austin's Federally-licensed facilities throughout United States with either our own commercial motor

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vehicles operated by our own professional commercial drivers or by private motor carriers, diversion of COI of this facility is highly unlikely.

Our first Top Screen submitted in 2008 resulted in the facility being “Untiered.” However, Top Screens completed in 2015 and 2017 resulted in a determination of the facility as a **Tier 3** high-risk facility.

In order to meet DHS Risk Based Performance Standards, Austin Powder made several significant changes to the facility, including:

- Perimeter fencing
- Changed locking mechanisms on COI magazines
- Installed an Intrusion Detection System monitored 24/7
- Reinforced gates
- Additional employee training
- Additional signage
- Additional records of training, audits, equipment maintenance

The man-hours and implementation cost for these additional security measures totaled \$837,400 with a recurrent annual expense for contracted monitoring services.

Each business has its own regulatory environment applicable and beneficial to its operations. It is with confidence that Austin Powder relies on the Federal Explosives Laws and Regulations in 27 CFR 555 Commerce in Explosives to remain compliant as we build our business. The Chemical Facility Anti-Terrorism Standards (CFATS) program, however, does not provide us with the knowledge of risk-based tiering to draw accurate conclusions needed to manage our business

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without government involvement. Without the right tools and analysis process there isn't a way to qualify or disqualify potential solutions to our business opportunities.

We respect those that appreciate the CFATS oversight in an otherwise unregulated business. My testimony is meant to provide evidence that in a highly-regulated industry, like the commercial explosives industry, layering additional DHS regulation on top of existing ATF regulation that has proven to keep commercial explosives secure, is unnecessary and confusing.

On behalf of Austin Powder, I urge you to support an exemption of ATF Federally licensed facilities in the CFATS program. Thank you for the opportunity to testify today.



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*The safety and security institute of the commercial explosives industry since 1913*

Testimony of  
Debra Satkowiak  
President  
Institute of Makers of Explosives

on

Examining the Chemical Facility Anti-Terrorism Standards Program

before the

U.S. Senate Committee on Homeland Security and Governmental Affairs

June 12, 2018

Testimony of Debra Satkowiak  
President, Institute of Makers of Explosives  
Before the  
Senate Committee on Homeland Security and Governmental Affairs  
June 12, 2018

Chairman Johnson, Ranking Member McCaskill, and members of the Committee, on behalf of the Institute of Makers of Explosives (IME) and the commercial explosives industry, thank you for the opportunity to discuss the Department of Homeland Security's (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) program and the critical role Congress plays in ensuring the effectiveness of CFATS while safeguarding our nation's security.

We commend the Committee for its leadership on CFATS reauthorization and willingness to address the concerns of those affected by the program, namely the duplicative nature of the program for the explosives industry.

Founded in 1913, IME is the safety and security institute for the commercial explosives industry, a charge we do not take lightly, as evidenced by the industry's excellent track record. Our work, in conjunction with the regulations set forth by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and our industry's dedication to continual improvement has resulted in an ever-increasing culture of security that has seen the use of regulated commercial explosives as a component of improvised explosives devices in bombing incidents remain below 2% for the last 25 years, according to available ATF Explosives Incident Reports (EIRs). IME takes an active role in promoting responsible practices through the full life cycle of commercial explosives and regularly publishes, updates, and distributes free of charge, our series of Safety Library Publications (SLPs), including SLP 27 which covers *Security in Manufacturing, Transportation, Storage and Use of Commercial Explosives*, to the benefit of our workers and the general public.

**Duplicative regulation of explosives should be eliminated**

While IME readily acknowledges the improvements the CFATS program has made in the last four years, we remain concerned that DHS' regulations on explosive materials continue to duplicate security regulations under the jurisdiction of ATF. This duplication of regulation imposes significant costs that impact jobs and industry investment without a commensurate increase in security.

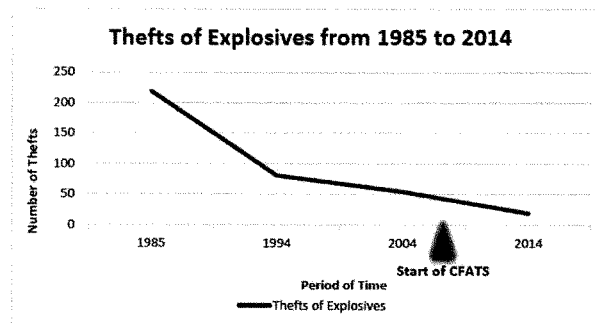
When the department promulgated the CFATS Chemicals of Interest (COI), Appendix A, in 2007, they included explosive materials that were already regulated by ATF for safety and security purposes for nearly a half century in accordance with the Organized Crime Control Act of 1970, and later by the Safe Explosives Act of 2002. Explosives are the only materials on the COI for which security regulations exist under the jurisdiction of another agency. Given that ATF regulatory requirements, along with industry best practices, have resulted in a sustained and exemplary security record for the commercial explosives industry, the costs incurred under the duplicative CFATS requirements far exceed any benefits.

The inclusion of already regulated explosive materials on the COI may likely be the result of ATF's exclusion from the CFATS development process, a concern ATF mirrored in an August 2007 correspondence to DHS, obtained by IME through a Freedom of Information Act (FOIA) request, stating "For reasons unclear to ATF, until this time ATF was not consulted or asked to comment on various drafts or prior versions of this rule. As you know, ATF has considerable experience and expertise regulating explosives to prevent their criminal misuse, including acts of terrorism." ATF has long held the role of regulating commercial explosives and the duplication

of those regulations by DHS has only served to increase compliance costs and confusion, rather than security.

#### **The excessive costs and lacking security benefits of CFATS**

CFATS, despite augmenting facility security expenditures, has done little towards an actual increase in commercial explosive security. After reviewing the available Explosives Incident Reports (EIRs) issued by ATF from 1985 to 2014, IME found that while there has been a consistent and remarkable reduction in thefts of explosives over the last 30 plus years, there is no marked increase in that rate of decline following the beginning of the CFATS program. Clearly, the record shows that ATF regulations and industry best practices effectively ensure security of commercial explosives and prevent diversion for criminal or other illicit use.



While there is no empirical data that shows a need for CFATS regulation of commercial explosives under ATF jurisdiction, IME was able to gather data on how much CFATS compliance costs the industry. In 2017, IME prepared four case studies to identify these costs and found that, for the four sites reviewed, the total expected compliance cost reached over \$2.6 Million; a sum that saw no proportionate increase in facility security. One facility, also regulated by the Department of Defense (DoD) and ATF, was asked to run electricity to a mandated no-spark

environment. The result was the imposition of massive cost, upwards of \$500,000 to run underground electricity in accordance with DoD regulations or the alternative option for round-the-clock in person surveillance over multiple storage sites, which carried with it an estimated cost of \$3M. Considering all four sites were already regulated for security by the ATF, CFATS requirements provided minimal additional security benefits despite the massive associated costs. During these case studies, it became evident that many IME member companies find the compliance measures germane to CFATS to be superfluous yet costly, an experience that is further detailed by the Austin Powder Company in their related testimony.

In addition to monetary expenditures, the workforce burden of CFATS is exhaustive. While the commercial explosives industry only has approximately 24 sites regulated by CFATS, all ATF regulated facilities must submit to Top-Screens. With an estimated 10,500 ATF licenses and permits in circulation, and the Office of Management and Budget estimated 6 hours it takes to complete a Top-Screen survey, the number of man-hours required to, in large part, find out you do not qualify for CFATS oversight can be immense and unnecessary. One IME company alone spent an estimated 357 hours filling out Top-Screens for facilities already effectively regulated by ATF for security, hours that could have been spent bolstering their existing security, safety, health and environmental safeguards.

#### **CFATS contradicts other federal regulations**

While IME's first concern remains the duplicative nature of the CFATS program on our already regulated industry, we would be remiss if we neglected to address how this duplication lends itself to regulatory conflict. On occasion, CFATS regulations will challenge the mandates of other federal regulators, leaving our member companies to decide which body carries the



bigger stick. One such example resulted in an explosives company being asked to move an explosives storage magazine to comply with CFATS, a magazine that had been approved by ATF according to the American Table of Distances (ATD). The ATD was developed by IME and adopted by ATF to ensure safety in storing explosive materials to prevent both sympathetic detonations of surrounding storage sites and impact to surrounding communities. On other occasions, DHS personnel advised IME member companies and downstream customers that *mobile* bulk trucks that operate with blasting agents not subject to CFATS purview would be tiered into the program and would have continued down that regulatory path had IME not intervened with technical information and guidance. In addition to failure to respect ATF's jurisdictional lines, confusion has also been caused by DHS' oversight into operations that fall under the authority of the Department of Transportation. In the past, the explosives industry experienced reasonable certainty in regards to what types of operations fell under which agency's jurisdiction, but DHS has stated in no uncertain terms that they do not follow any jurisdictional boundaries typically respected by other agencies.

**Lack of transparency in the CFATS tiering process and challenges with non-prescriptive standards**

All regulations should be transparent: clear, concise and easy to follow in order to promote consistency, reliability and compliance. The CFATS program, by design, is none of these. At each step, from submission of top screens to security plans and through compliance inspections, the regulated party must wait for a decision from Washington, based on non-published algorithms before advancing to the next step. While CFATS personnel in Washington are willing to discuss a particular site's security issues over the phone to explain their thinking,

there are no articulated guidelines, charts or tables available to the regulated industries to provide direct information on how they will be tiered. This presents an obstacle to business planning for existing and future operations, and limits the ability of a facility to make proactive choices to control operational aspects that could change a tiering status.

As evidenced by Austin Powder's experience with the tiering process, a company does not know what tier level it may be assigned because the decision matrix is concealed from them. Companies do know if they possess chemicals of interest and the quantity but because the CFATS tiering program (the Chemical Security Assessment Tool (CSAT) includes other factors unknown to the company, determining a facility's tiering level prior to a Top-Screen is impossible for most companies. Tiering is simply the first challenging step.

A facility's tier then determines what sort of Risk Based Performance Standards (RBPS) it must implement to meet CFATS compliance. DHS has produced a 199-page guidance document to "help" companies figure out how to comply with the 18 different standards.

It is important for the committee to know that the guidance document says this:

"To meet the RBPSs, covered facilities are free to choose whatever security programs or processes they deem appropriate, so long as they achieve the requisite level of performance in each applicable area. The programs and processes that a high-risk facility ultimately chooses to implement to meet these standards must be described in the Site Security Plan (SSP) that every high-risk chemical facility must develop pursuant to the regulations. It is through a review of the SSP, combined with an on-site inspection, that DHS will determine whether or not a high-risk facility has met the

requisite levels of performance established by the RBPSs given the facility's risk profile.<sup>1</sup>

Ultimately, a company must jump through a series of hoops and at each step and wait for approval. While these steps were created with the best of intentions, four facts make them problematic.

1. DHS can change the tiering program (CSAT) without notice, which could increase or decrease a facility's tier. CSAT 2.0, for example, was released in September 2016.
2. CFATS personnel have discussed the possibility of conducting a re-tiering process on a multi-year schedule.
3. The 199-page guidance document is a non-binding guidance that can also be changed or updated without notice.
4. In 2014, DHS started working on an update of CFATS regulations in accordance with the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, Pub. L. 113-254. When initiated, DHS noted, "The NPRM will propose substantive modifications to CFATS based on public comments received on the ANPRM and based on program implementation experience the Department has gained since 2007."<sup>2</sup> While the effort was recently moved to long term actions on the Unified Regulatory Agenda, one can expect that if reauthorized in 2018, the effort will be renewed.

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<sup>1</sup> DHS Risk-Based Performance Standards Guidance, Chemical Facility Anti-Terrorism Standards, May 2009 Pg 8.

<sup>2</sup> Department of Homeland Security (DHS) *Fall 2015 Statement of Regulatory Priorities*, Chemical Facility Anti-Terrorism. Pg 14.

As you can see, these four factors make pre-emptive compliance inherently difficult at best in the short-term. Predictably is impossible in the long-term.

The Austin Powder Company, in their associated testimony, will explain in detail how the guarded tiering process has worked to increase their expenditures while leaving facility security unaffected. Had Austin Powder known the additional burdens CFATS compliance would entail, they may have changed their decision to lease the property. That negative experience will influence their future business decisions.

Conversely, an IME member planning to build a new facility according to ATF regulations knows the construction, security, and compliance costs, therefore allowing for sound business decisions to be made.

**An exemption for ATF regulated facilities for industry**

IME has repeatedly requested that DHS relieve the industry from this duplicative burdensome regulation. IME met with Mr. Robert Kolasky, Deputy Under Secretary (acting), National Protection and Programs Directorate, in his position as Regulatory Reform Officer (RRO) for the department. The meeting was held on October 30, 2017 to discuss regulatory reform per Executive Order (EO) 13771 on Reducing Regulation and Controlling Regulatory Costs and EO 13777 on Enforcing the Regulatory Reform Agenda. IME briefed him on the redundancy of CFATS on our industry and explained how removal of this duplicative regulation would allow DHS to focus valuable resources on other critical risks to our Nation. The Department did advise IME that they will not pursue rulemaking to remove explosive materials subject to ATF regulation, however, outside of the October meeting DHS officials indicated that they would not object to a legislative fix if IME chooses to pursue that route.

During the initial development of the CFATS legislative text, Congress wisely understood that a one-size-fits-all approach to chemical security was not necessary and exempted: 1) Facilities regulated pursuant to the Maritime Security Act of 2002; 2) Public Water Systems as defined by the Safe Drinking Water Act (Sec 1401); 3) Treatment Works as defined by the Federal Water Pollution Control Act (Sec. 212); 4) Dept. of Defense and Dept. of Energy facilities; and, 5) Facilities regulated by the Nuclear Regulatory Commission. Surprisingly, ATF regulated facilities are not provided similar deference. For this reason, and those previously stated, we request the Committee reduce the duplicative burden of CFATS on the explosives industry by providing an additional and equal exemption based on the comprehensive and effective ATF regulations outlined above.

\* \* \* \* \*

The commercial explosives industry is eager to work with this Committee in a bipartisan manner to reauthorize the CFATS program in a manner that enhances national security while reducing blatantly duplicative regulations; clearing the path for government to focus resources on actual threats to our national security and allowing industry to fully invest their time and resources in a regulatory system that has long proven to be effective. Thank you for the opportunity to testify today.



The Honorable Ron Johnson  
Chairman  
Senate Committee on Homeland Security & Governmental Affairs  
U.S. Senate  
Washington, DC 20510

The Honorable Clair McCaskill  
Ranking Member  
Senate Committee on Homeland Security & Governmental Affairs  
U.S. Senate  
Washington, DC 20510

June 20, 2018

Re: ROUNDTABLE – Examining the Chemical Facility Anti-Terrorism Standards Program

The Agricultural Retailers Association (ARA) appreciates this opportunity to comment on the reauthorization of the Chemical Facility Anti-Terrorism Standards (CFATS) program. The authorizing legislation of CFATS is set to expire in January of 2019. ARA members have a substantial interest in the reauthorization of the CFATS program.

ARA is a not-for-profit trade association that represents the nation's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmers cooperatives to large companies with multiple outlets.

It is estimated that there are approximately 6,500 agricultural retail facilities in the United States. Approximately one-third of these facilities are regulated under the CFATS program because they store or handle products included in Appendix A: Chemicals of Interest (COI)—namely anhydrous ammonia and/or ammonium nitrate. The agricultural retail sector accounts for about half (50%) of all CFATS regulated facilities.

While the initial rollout of the CFATS program was challenging, ARA is pleased with the Department of Homeland Security's (DHS) efforts to improve the program and enhance stakeholder engagement. ARA members expended capital resources to comply with the

program, but there have been benefits from participation. Today, the industry is focused on the common goal to ensure the products are properly stored, handled, and used for their intended purpose. In considering the benefits of participation, the industry now has a better idea of the security risks at facilities, which allows for prioritization on the most high-risk facilities. Furthermore, CFATS allows us to build stronger relationships with our neighbors and communities.

With the current authorization of CFATS through HR 4007 expiring in January 2019, ARA supports a four-year reauthorization that continues to provide industry with the regulatory certainty needed to make long-term facility investments and enables DHS to efficiently run the program.

Periodic reauthorization is important for continued congressional oversight and review of the program. The last four years of CFATS has been dominated by DHS simply trying to identify the universe of CFATS regulated facilities and working to get them into the program. Now that most of that work has been accomplished, DHS's efforts are now shifting more towards compliance and enforcement. A four-year reauthorization will allow Congress an opportune time to check-in on DHS and ensure it continues a cooperative approach to enforcement—which is most appreciated by the industry.

We believe it is important that any reauthorization prohibits the disclosure of sensitive site security information to the general public, or to anyone who does not have a “need to know,” or the required security clearance to obtain such information. The program must ensure that highly sensitive information is protected from individuals that might pose a security threat to the facility's employees or property.

In addition, we strongly support robust public engagement and believe any changes to the CFATS program, including Appendix A, should be done through proper notice-comment rulemaking.

Finally, we ask that Congress provide a statutory framework for a CFATS recognition program. A CFATS recognition program would be beneficial to both industry and DHS. In exchange for regulatory incentives, industry participants would self-regulate the requirements of CFATS and DHS would be able to better utilize its limited resources on facilities that might not otherwise be complying with the regulation.

Many industries have stewardship programs that promote compliance with government regulations, including security regulations. The agricultural retail industry's stewardship program is ResponsibleAg. ResponsibleAg is a voluntary, industry-led stewardship program launched in 2015 with the goal of assisting agribusinesses to comply with federal environmental, health, safety, and security rules focused on the safe handling and storage of fertilizer products. At the core of the program is a federal regulatory compliance assessment addressing current federal regulations. These assessments identify any issues of concern, provide recommendations for corrective action if needed, and provide a robust suite of resources to assist in compliance. ResponsibleAg is designed to protect employees, first responders, and the general public through an organized and comprehensive program of periodic and thorough assessments.

Almost 2,600 agricultural facilities have signed up with ResponsibleAg, 1,900 facilities have been assessed, and nearly 1,000 facilities have been certified. In the three years of existence, more than one-third of agricultural retail facilities have voluntarily joined ResponsibleAg.

Thank you again for this opportunity to comment and CFATS reauthorization. ARA is thankful for the committee's inspection of the program and grateful for your work to make this good government program better through reauthorization. We look forward to working with the committee on this shared goal and a successful reauthorization of the CFATS program.

Sincerely,



Kyle Liske  
Public Policy Counsel  
Agricultural Retailers Association



CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

NEIL L. BRADLEY  
EXECUTIVE VICE PRESIDENT &  
CHIEF POLICY OFFICER

1615 H STREET, NW  
WASHINGTON, DC 20062  
(202) 463-5310

June 26, 2018

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and  
Governmental Affairs  
U.S. Senate  
Washington, D.C. 20510

The Honorable Claire McCaskill  
Ranking Member  
Committee on Homeland Security and  
Governmental Affairs  
U.S. Senate  
Washington, D.C. 20510

Dear Chairman Johnson and Ranking Member McCaskill:

The U.S. Chamber of Commerce appreciates the roundtable that the committee held on June 12, *Examining the Chemical Facility Anti-Terrorism Standards Program*. We strongly support reauthorizing the Chemical Facility Anti-Terrorism Standards (CFATS) program—a regulatory effort that is administered by the Department of Homeland Security (DHS) to enhance security at high-risk chemical facilities.

It is important that Congress act expeditiously to extend CFATS. The Chamber is part of the CFATS Coalition, which is composed of an array of associations and companies that are impacted by CFATS regulations. Coalition members represent major sectors of the U.S. economy, including chemical production, chemical distribution and storage, manufacturing, oil and gas refining, utilities, mining, and agricultural goods and services. These businesses are critical to the health of the American economy. The “Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014” (P.L. 113-254) will expire in January 2019. The Chamber supports a multiyear reauthorization to provide the owners and operators the certainty they need to make long-term planning and investment decisions.

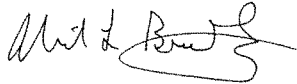
Reauthorization legislation should also improve CFATS. In particular, new legislation should safeguard sensitive security information. Terrorists and other malicious actors should not be given the keys to unlock the security of a facility. The Chamber supports strictly limiting access to sensitive information (e.g., control system schematics and chemical vulnerability data) to the owners and operators of a facility, cleared individuals, and DHS. Any new law that would weaken controls governing site security information would be a step in the wrong direction.

CFATS should be more transparent to the regulated community. DHS should better explain the Department’s risk-tiering methodology to a facility’s security principals. Industry organizations often tell the Chamber that this process is unnecessarily vague, which inhibits a covered site’s security and resilience posture. In addition, the Chamber recommends that any

changes to the Appendix A list of approximately 300 chemicals of interest, or COI, remain subject to public notice and comment.

The Chamber looks forward to continuing to work with your committee, DHS, and relevant stakeholders as legislation extending CFATS is developed and moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil L. Bradley", with a stylized flourish at the end.

Neil L. Bradley

cc: Members of the Committee on Homeland Security and Governmental Affairs



## Environmental Technology Council

1112 16<sup>th</sup> Street NW • Suite 420 • Washington DC 20036 • (202) 783-0870

### Roundtable Date/June 12, 2018

The Honorable Ron Johnson  
Committee Chairman  
Senate Committee on Homeland  
Security & Government Affairs  
340 Dirksen Senate Office Bldg.  
Washington, DC 20510

The Honorable Claire McCaskill  
Ranking Member  
Senate Committee on Homeland  
Security & Government Affairs  
340 Dirksen Senate Office Bldg.  
Washington, DC 20510

### Statement for the Record

#### Senate Committee on Homeland Security and Government Affairs

#### Roundtable – Examining the Chemical Facility Anti-Terrorism Standards Program

Chairman Johnson, Ranking Member McCaskill and Members of the Committee, the Environmental Technology Council (ETC) would like to express its appreciation for the opportunity to submit a statement for the record on our proposed change to the Chemical Facilities Anti-Terrorism Standards (CFATS) as part of the Department of Homeland Security Reauthorization bill.

The ETC is the national trade association for the commercial hazardous waste management industry. ETC member companies provide technologies and services to customers for the safe and effective recycling, treatment, and secure disposal of hazardous wastes through high-temperature incineration and other advanced technologies. For the reasons listed below, ETC is proposing that RCRA Part B permitted Treatment Storage and Disposal Facilities (TSDFs) be added to the list of excluded facilities under 6 CFR § 27.110(b) of the CFATS regulations.

Due to the broad definition of “chemical facility” in CFATS, many ETC member companies operate hazardous waste management facilities that are subject to the CFATS program. Many of these same facilities hold permits under the Resource Conservation and Recovery Act (RCRA) that impose stringent security and safety procedures that duplicate CFATS requirements. Some of these redundancies include emergency planning, perimeter security, shipment tracking and discrepancy reporting, “know your customer” through waste profiling, container handling and inspection and Waste Analysis Plans. The RCRA regulations at 40 CFR Part 264 clearly describe the many procedures permitted TSDFs must follow:

- 40 CFR 264 Subpart C Preparedness and Prevention requires that facilities be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous

waste constituents to air, soil, or surface water which could threaten human health or the environment. In addition, facilities must have an internal communications or alarm system capable of providing immediate emergency instruction to facility personnel; a device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams; portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

- 40 CFR 264 Subpart D Contingency Plan and Emergency Procedures requires that each facility must have a contingency plan and said plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.
- 40 CFR 264 Subpart E Manifest System, Recordkeeping and Reporting requires that if a facility receives hazardous waste accompanied by a manifest, the manifest must be signed and dated to certify that the hazardous waste covered by the manifest was received. This section also requires other recordkeeping and reporting of hazardous waste to ensure that the waste is properly accounted for and managed.
- 40 CFR 264 Subpart I requires that containers must be made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired. If a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the hazardous waste must be transferred from this container to a container that is in good condition or manage the waste in some other way that complies with regulations.
- 40 CFR 264 Subpart J Tank System Standards require that tank systems be inspected to ensure no leakage. Inspection assessments must be kept on file at the facility and must be reviewed and certified by a qualified professional engineer. This assessment must determine that the tank system is adequately

designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail.

The CFATS regulations at 6 CFR § 27.110(b) exclude hazardous wastes except a limited subset of wastes identified as P and U listed hazardous wastes in 40 CFR § 261.33 (P and U listed wastes). Since some ETC member companies operate facilities that manage P and U listed wastes, the current CFATS requirements are potentially applicable to their commercial waste management operations. In order to address this issue, ETC and its member companies seek to add RCRA permitted TSDFs to the list of excluded facilities due to the many redundancies that exist between CFATS and RCRA regulations. The requested revision is to modify 6 CFR § 27.110(b) by adding the following language in bold type below:

#### Section 27.110 Applicability

(a) This part applies to chemical facilities and to covered facilities as set out herein.

(b) This part does not apply to facilities regulated pursuant to the Maritime Transportation Security Act of 2002, Pub. L. 107-295 as amended; Public Water Systems, as defined by section 1401 of the Safe Drinking Water Act, Pub. L. 93-523 as amended; Treatment Works as defined in section 212 of the Federal Water Pollution Control Act, Pub. L. 92-500, as amended; any facility owned or operated by the Department of Defense or the Department of Energy, or any facility subject to regulation by the Nuclear Regulatory Commission, **or Treatment, Storage and Disposal Facilities as defined in section 3004(a) of the Solid Waste Disposal Act, Pub. L. 94-580 as amended, that has obtained a permit issued pursuant to section 3005.**

Although there are many RCRA permitted TSDFs, there only a small number of these facilities that actually manage a Chemical of Interest (COI) over the threshold and hence have been tiered by DHS. It is worth noting that even facilities that are not tiered by DHS may still be negatively impacted by the CFATS program since they experience the administrative burden to managing inventory of COI below the established threshold.

To quantify the high cost of CFATS compliance for RCRA permitted TSDFs, an ETC member company calculated that based on the amount of time they spend monitoring their systems to ensure they stay below thresholds and for maintaining the program at sites where they have security programs, they estimate they spend \$80,000 annually to comply with CFATS. In terms of monitoring their systems to ensure they stay below thresholds, the company noted the following factors were considered when calculating the annual compliance cost:

- How many sites could conceivably manage chemicals regulated under the program?

- How long it took trained compliance employees to review systems on a daily basis to determine whether or not the facility was approaching a threshold?
- How many instances occurred where action had to be taken to avoid a facility exceeding a threshold (*e.g.*, diverting an incoming waste, or shipping out a waste already on-site)?
- How many man-hours were involved from a compliance and operating standpoint to avoid having a threshold exceedance?
- Estimating costs for re-routing waste to other facilities (mostly transportation).
- Factoring manpower hours for the above work against general salary rates.

As for those RCRA TSDFs currently governed by CFATS, the company noted that the following factors were considered when calculating the annual compliance cost:

- Administrative salary hours and costs for maintenance and updating of security plans;
- Salary hours and costs for training of new employees and refresher training of existing personnel;
- Administrative costs for recordkeeping.

These costs do not result in any increased safety or protection against terrorist activity particularly since the RCRA permitted TSDF already has in place all RCRA requirements for security, inventory tracking, and employee training. These cost and administrative burdens could be saved by adding commercial RCRA permitted TSDFs to the list of excluded facilities under 6 CFR § 27.110(b) of the CFATS regulations.



*Leading Innovation. Creating Opportunity. Pursuing Progress.*

## Statement for the Record

**of Ross Eisenberg**  
Vice President  
Energy and Resources Policy  
National Association of Manufacturers

*before the Senate Committee on Homeland Security and Governmental Affairs*

*on "Examining the Chemical Facility Anti-Terrorism Standards Program"*

June 12, 2018



**STATEMENT FOR THE RECORD OF ROSS EISENBERG  
BEFORE THE SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL  
AFFAIRS**

Roundtable on:  
“Examining the Chemical Facility Anti-Terrorism Standards Program”

**JUNE 12, 2018**

The National Association of Manufacturers (NAM) is the nation’s largest industrial trade association, representing 14,000 small, medium and large manufacturers in every industrial sector and in all 50 states. Our members have a substantial interest and concern regarding requirements of facility site security programs, including compliance with the Department of Homeland Security’s (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) program. The current CFATS program, established by the Protecting and Securing Chemical Facilities from Terrorist Attacks Act (P.L. 113-254), will sunset on January 19, 2019. The NAM strongly supports efforts to ensure the continuity of the CFATS program. However, as Congress begins to consider reauthorization of the statute, manufacturers want to ensure legislation to reauthorize CFATS will provide regulatory certainty and not harm the intent of the program.

Manufacturers are deeply committed to the communities in which they live and serve. Across the nation, they have demonstrated a firm resolve in protecting critical infrastructure, their facilities and key assets from terrorist exploitation. Securing the homeland is a partnership that involves government at all levels, the private sector and concerned citizens across the country that are committed to action. This is why our member companies prudently make security investments



and engage in risk management planning; it is something that is required by law and something that our members consider a core component of their business operations. The NAM represents 2,152 CFATS-regulated facilities that span across major industrial sectors, such as oil and gas refining; chemical production and distribution; mining; agricultural goods and services; and electrical utilities. As CFATS-regulated facilities, these sites are engaged in the manufacturing, storage and distribution of what DHS considers chemicals of interest (COI).

Prior to the CFATS program's authorization in 2014, DHS's authority to regulate high-risk facilities was dependent on Congress approving an act of appropriations. Since its enactment in 2007, CFATS was bound to the appropriations process, and this acted as a barrier to making needed improvements to the program. DHS and industry were thrust into an environment steeped with regulatory uncertainty. Such programmatic uncertainty is detrimental because industry relies on stability to make sound, long-term investments and meet regulatory requirements. However, the authorization of CFATS in 2014 represented a turning point for the program and set an important precedent—namely, removing CFATS from the appropriations track allowed Congress, for the first time, to make significant improvements to the program. These improvements included the following:

- **Mandating congressional oversight**, requiring the Secretary of Homeland Security and Comptroller General to provide Congress with progress updates on the implementation of the CFATS program.

- **Fostering continued information sharing** between manufacturers and state and local officials to enhance security.
- **Requiring DHS to develop a security risk assessment approach and revised tiering methodology** for CFATS-regulated facilities that considers facility vulnerabilities and threat information as well as potential economic harm and loss of life.
- **Modernizing the screening process** for individuals seeking access to secure facilities. Utilization of the Personnel Surety Program eliminates duplicative regulatory requirements for facility owners and operators who need to vet individuals against the terrorist screening database.
- **Establishing an Expedited Approval Program (EAP)** for Tier 3 and 4 facilities. The EAP enables lower-tiered facilities to accelerate their site security plans through DHS's approval process.

#### **The NAM Supports a Multiyear CFATS Reauthorization**

Manufacturers believe that the multiyear congressional authorization of the CFATS program in 2014 was a pivotal moment for the longevity of the program. The NAM believes Congress should do so again. A multiyear reauthorization would continue to provide DHS with the ability to efficiently and effectively operate the CFATS program. Importantly, manufacturers would also greatly benefit from such regulatory certainty. This would enable industry to confidently make appropriate, economically justifiable, long-term investments to protect facilities' threat and vulnerability conditions.

**CFATS Reauthorization Must Safeguard Facility Site Security Information**

The current CFATS statute requires sharing information “with state and local government officials possessing a need to know and the necessary security clearances, including law enforcement officials and first responders.”<sup>1</sup> The NAM supports continued information sharing between manufacturers and federal, state and local officials to enhance security.

Manufacturers are committed to doing their part to protect their facilities, personnel, surrounding communities and the environment. According to an NAM member company, information applicable to the safe response to an incident is shared with appropriate response organizations based on risk. With regards to unplanned events, information such as chemical inventories, facility layout and available onsite emergency equipment/capabilities are shared with appropriate first responders to ensure they are adequately prepared if an emergency arises. Facilities collaborate with agencies to plan and execute drills and exercises, as well as regularly participate at local emergency planning meetings.

However, it is imperative that the submitters of confidential information to the government and first responders have a corresponding right to expect that the confidentiality of such information shall be preserved and properly protected against public disclosure. CFATS reauthorization should not expand Section 2103 of the statute (“Protection and Sharing of Information”) to permit public disclosure of facility site security information. Chemical-threat vulnerability information, such as security system designs, control system schematics, worst-

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<sup>1</sup> Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014. Pub. L. 113-254. Sec. 2103: Protection and Sharing of Information.

case scenario discharge data, COI records and tactical response information for emergency personnel, must be safeguarded from potential threats or individuals actively seeking to do harm. The only individuals that should have access to facility site security information are those who have appropriate security credentials and clearances. The NAM is concerned about the resultant harm to the industry, facility personnel, the surrounding community and environment and the nation at large when disclosure is indiscriminate and fails to protect sensitive and confidential business information.

**Manufacturers Must Be Consulted on Proposed CFATS Regulatory Changes**

The NAM believes that public participation in the agency decision-making process is an essential mechanism that ensures political accountability. Starting with the Administrative Procedure Act and enhanced by a series of executive orders, rules and procedures spanning multiple presidential administrations, the federal government has recognized the importance of public participation in rulemaking and non-regulatory proceedings.

In this same vein, manufacturers must continue to be consulted on proposed regulatory changes to the CFATS program. For example, if DHS suggests alterations to Appendix A: Chemicals of Interest, these alterations must be subject to notice and comment rulemaking. Stakeholder engagement and participation is vital to the regulated community because changes to Appendix A could impact whether facilities are considered CFATS-regulated sites. In

addition, DHS's decision to modify Appendix A must be based on level of risk, sound scientific data and a comprehensive cost-benefit analysis.

### **Conclusion**

Manufacturers have established a strong record of facility security and strive to further protect the communities in which they live and serve. Facility security will remain a top priority for manufacturers, and as such, the NAM supports the continuity of the CFATS program. CFATS reauthorization must provide manufacturers with the regulatory certainty to make the necessary investments in their facilities and meet compliance requirements.

**Post-Hearing Questions for the Record  
Submitted to David Wulf  
From Senator Heidi Heitkamp**

**“Examining the Chemical Facility Anti-Terrorism Standards Program”**

<b>Topic:</b>	Guidance
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Heidi Heitkamp
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** As you know, cyberattacks rely on vulnerabilities to exploit and infiltrate systems and networks, and these vulnerabilities are created and compounded when people use bad cyber practices. Systems are only as secure as the weakest link, and that is why it is critical that employees have a robust understanding of the steps they need to take to navigate their systems and networks safely and securely.

How does DHS factor in a facility's plans and procedures to educate its employees on the best cyber hygienic practices? What type of guidance is provided to the facilities? Is enough attention being provided in this area?

**Response:** Facilities determined to be high-risk under the CFATS program are required to implement security measures to satisfy 18 risk-based performance standards (RBPS). RBPS 8 – Cyber – requires facilities to implement appropriate cybersecurity measures to prevent unauthorized onsite or remote access to critical cyber systems.

To assist facilities in satisfying RBPS 8, DHS published the RBPS Guidance Document, which includes an appendix containing cybersecurity measures, cybersecurity considerations, best practices, and a list of resources and available training, such as those offered by the US Computer Emergency Readiness Team (CERT) and National Institute of Standards and Technology (NIST). In addition, the Department has published a fact sheet on RBPS 8 and has cybersecurity professionals and Chemical Security Inspectors available for assistance and consultation.

In evaluating RBPS 8, DHS first determines what types of systems the facility has in place that could affect the security of the chemicals of interest (COI). Based on this determination, DHS requires different levels of cybersecurity measures. These may include elements such as access control procedures utilizing the concept of least privilege, password management, system boundaries, network monitoring, virus protections, and incident reporting and response.

<b>Question#:</b>	1
<b>Topic:</b>	Guidance
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Heidi Heitkamp
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

DHS acknowledges that often the human component is the most vulnerable aspect of a cyber system. As a result, all facilities with critical systems must implement cybersecurity policies, procedures, and training to ensure appropriate education and awareness of all employees with access to cyber systems. DHS confirms that facilities' cybersecurity training programs include topics such as a cybersecurity overview, roles and responsibilities, password procedures, acceptable practices, how to identify suspicious activity, and to whom to report suspected inappropriate or suspicious activity. DHS also ensures that individuals receive this training prior to or shortly after access is gained and that training is refreshed and reinforced on a regular schedule.

<b>Question#:</b>	2
<b>Topic:</b>	Solutions
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Heidi Heitkamp
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** Technology is continuously evolving, and I think it's important that DHS is regularly engaged with companies that offer innovative solutions. In North Dakota, DiamondB Technology Solutions has made notable advancements in the area of plume modeling. Using 3-D modeling, sensors, real-time maps and cloud technology, DiamondB's technology can locate chemical plumes within a few minutes, giving first responders the information they need to warn residents, take action, and save lives. A TechLink article published earlier this year, which I am submitting for the record, demonstrates how DiamondB's technology was able to provide real-time plume modeling to the West Fargo Fire Department in response to a chemical incident.

From a broad DHS perspective, as technologies evolve, what steps does DHS take to identify and capitalize on innovative solutions? Do you believe DHS is providing enough attention in this area?

With respect to plume modeling and the CFATS program, are some facilities required to include plume modeling in their Site Security Plans? If so, how does DHS evaluate the quality of their plume modeling?

**Response:** The DHS Science & Technology Directorate (S&T) is charged with delivering effective and innovative methods and solutions to meet the critical requirements and needs of both DHS operational components and the Homeland Security Enterprise (HSE). S&T has a number of initiatives that focus on identifying and capitalizing on innovative solutions.

Specifically, S&T utilizes partnerships across federal, international, laboratory, academic, and private sector communities to maintain awareness of innovative activities and programs that may be leveraged for homeland security issues. In addition, DHS facilitates connections between the DHS operational components, the research and development community, and industry, so relevant parties across the Department are aware of innovative commercial products and can work to meet needs of operational end users.

Furthermore, S&T's technology scouting program is continually searching for innovative ideas and solutions that meet DHS priority research and development needs. S&T scouts for existing commercial products that meet component operational requirements or can be readily adapted. If existing commercial or near-market solutions are not identified, S&T initiates its research and development process to evaluate options and pursue



<b>Question#:</b>	2
<b>Topic:</b>	Solutions
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Heidi Heitkamp
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

appropriate technology development paths. Within this process, S&T engages a broad range of industry innovators to develop or adapt technologies for homeland security applications. S&T's efforts are tailored to all sizes and types of industry innovators and designed to span the entire R&D process, from concept ideation to homeland security operators in the field.

- The Small Business Innovation Research (SBIR) program provides funding to spur small business ideation, prototype development, and commercialization of innovative technologies for homeland security.
- S&T's Long-Range Broad Agency Announcement is a standing, open invitation to businesses, R&D laboratories and organizations, and academic universities to propose creative concepts or prototypes that address DHS needs.
- S&T also hosts Prize competitions and challenges to inspire and mobilize a wide spectrum of innovators to address homeland security challenges through public crowd-sourcing. Prizes may be open to companies of all sizes, entrepreneurs and startups, citizen inventors, and university student communities.
- Finally, the Silicon Valley Innovation Program, aimed at the startup community, provides a fast-track process for prototype development.

With respect to plume modeling and the CFATS program, DHS does not require facilities to include plume modeling in their Site Security Plans.

The Interagency Modeling and Atmospheric Assessment Center (IMAAC), managed by DHS/FEMA, is an interagency consortium of federal agencies that research and produce atmospheric transport and dispersion modeling for planning and response purposes. These resources are available to federal, state, local, tribal, and territorial (FSLTT) public safety authorities for planning support purposes (e.g., CFATS facility exercises and incident response). IMAAC includes Lawrence Livermore National Laboratory's National Atmospheric Release Advisory Center (NARAC), which conducts active research on the next generation of atmospheric transport and dispersion modeling capabilities.

**Post-Hearing Questions for the Record  
Submitted to David Wulf  
From Senator Claire McCaskill**

**“Examining the Chemical Facility Anti-Terrorism Standards Program”**

<b>Question#:</b>	3
<b>Topic:</b>	Intersect
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Claire McCaskill
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** How does the CFATS program intersect with the relevant regulatory frameworks administered by the following federal agencies:

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF);

Environmental Protection Agency (EPA);

Occupational Safety and Health Administration (OSHA);

Department of Transportation (DOT); and

United States Coast Guard (USCG)?

**Response:** The Infrastructure Security Compliance Division (ISCD) of DHS, which administers the CFATS program, routinely coordinates with the Departments and Agencies listed on chemical security issues. This includes active participation in the Chemical Sector Government Coordinating Council; memoranda of understanding and/or shared protocols with the Nuclear Regulatory Commission (NRC), Department of Defense, Department of Energy, and Environmental Protection Agency (EPA) regarding CFATS exemptions; and routinely working with ATF to coordinate and share information on the regulation of facilities possessing explosives and explosive precursor chemicals. Additionally since 2014, DHS, EPA, OSHA, and ATF have made a concerted effort to work together to enhance the safety and security of chemical facilities and reducing risks associated with hazardous chemicals to facility workers and operators, communities, and responders.

While many CFATS covered facilities are regulated by other federal programs, CFATS covers only the chemical facilities that are determined to be at the highest risk for

<b>Question#:</b>	3
<b>Topic:</b>	Intersect
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Claire McCaskill
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

security incidents and ensures those facilities have the security measures appropriate to their high level of risk. CFATS is thus a complement to other programs that regulate safety and those with security requirements insufficient to cover the high level of risk presented by a CFATS covered facility. CFATS covered facilities also can take credit for applicable security measures implemented for other regulatory programs in their CFATS site security plans.

For example, many of the CFATS Release chemicals of interest (COI) are also part of the EPA's Risk Management Program (RMP). RMP is focused on protecting the environment and the health and safety of populations living in areas near to facilities possessing hazardous chemicals, and requires facilities that use extremely harmful substances to develop a Risk Management Plan. EPA RMP safety regulations complement the CFATS security measures at CFATS covered chemical facilities tiered for release (approximately 28% of the CFATS covered population). Further, measures that facilities put in place for RMP are sometimes used in their CFATS Site Security Plans.

In some instances, DHS covers chemicals that may not be fully covered by other security regimes. For example, both ATF and DHS have the authority to regulate facilities that store, ship, sell, and/or manufacture Division 1.1 explosives. The ATF regulation does require some security measures to include requirements related to the conduct of inventories, the reporting of thefts/losses, and magazine-locking standards; however, the monitoring and detection standards in the CFATS regulation are more robust than those required under the ATF regulations. Additionally, ATF regulations apply only to materials whose primary or common purposes is to function by explosion. ATF regulations do not apply to improvised explosive device (IED) precursor chemicals such as ammonium nitrate. CFATS covers the IED precursor chemicals that ATF does not regulate. DHS meets with ATF on a quarterly basis for coordination and collaboration purposes. There are very few CFATS covered facilities for explosives regulated by ATF. Facilities regulated by the Coast Guard under the Maritime Transportation Security Act of 2002 (MTSA) are statutorily exempt from CFATS, but USCG and DHS have worked together since the inception of CFATS. USCG input and lessons learned from MTSA implementation were integral to the development of the CFATS regulations. As part of this coordination, a USCG detailee is embedded with ISCD.

<b>Question#:</b>	4
<b>Topic:</b>	Exemptions
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Claire McCaskill
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** Do you support adding or removing exemptions to the CFATS program? If so, please explain. If not, why not?

**Response:** The Department is committed to continuing to explore ways to streamline CFATS while also ensuring that security is in place at high-risk chemical facilities. DHS believes that prior to making changes to the current statutory exemptions it may be worth studying the vulnerability of facilities that may be exempted or are currently exempt from the program to determine whether there is a gap that poses a risk to the American public.

<b>Question#:</b>	5
<b>Topic:</b>	Inspectors
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Claire McCaskill
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** Please describe the training that CFATS chemical security inspectors receive. How often is the training reevaluated and updated? Are there any plans currently in the works to adjust or enhance the curriculum?

What specific training do CFATS chemical security inspectors receive in order to properly conduct their evaluation of cybersecurity-related performance standards?

**Response:** Developing and maintaining the knowledge of our chemical security inspectors (CSIs) is a priority for the Department, and program-specific training is a constant and continuous process throughout an inspector's career. DHS updates and adjusts the content of the various types of CSI training as the CFATS program evolves, as policies and processes are issued or honed, and in response to trends identified in stakeholder feedback and by DHS supervisors, analysts, and inspectors.

The CSI training program in place today is made up of several types of training and learning elements:

1. CSI Inspections Course, a 16-module series with three practical demonstrations of the business process systems the CSIs utilize to conduct and capture their work. The course spans seven days and is taught by seasoned Supervisory CSIs. Each student must pass an oral exam on the CFATS regulatory process as well as two written exams (a mid-course and final exam) to ensure mastery of the materials. Current modules include topics such as the RBPS and regulation, inspections procedures, principles of physical security, and how ISCD inspects cyber measures.
2. On-the-job practical training. Following the Inspections Course, CSIs begin on-the-job training where they work with supervisors, senior inspectors, and seasoned inspectors to gain the practical experience needed to function as an inspection team member and eventually an inspections team lead.
3. Continuing Education. A series of fifteen on-line courses is assigned to each new inspector to be completed within the first six months as part of their on-the-job training program. Topics focus primarily on the regulation and various physical security measures with which inspectors must be familiar, and include chemical industry safety, closed circuit TV, and intrusion detection systems.
4. Refresher and policy-specific training. ISCD regularly performs refresher or topic-specific training performed during regional and national all-hands meetings,

<b>Question#:</b>	5
<b>Topic:</b>	Inspectors
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<b>Committee:</b>	HOMELAND SECURITY (SENATE)

conducts monthly teleconference/webinar meetings with all inspectors to share best practices, and updates internal guidance for best practices on inspections.

In addition to these job-specific trainings, inspectors must complete DHS mandatory training requirements, such as preventing workplace harassment and records management training.

<b>Question#:</b>	6
<b>Topic:</b>	Approach
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Claire McCaskill
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** What is DHS's approach to ensuring cybersecurity at high-risk chemical facilities? Why is cybersecurity included in the CFATS program?

**Response:** Within the CFATS program, cybersecurity is an essential component in managing overall risk for a facility. Attackers conducting malicious attacks on critical systems could result in theft, diversion, release, or sabotage of chemicals of interest. High-risk chemical facilities are required to have a comprehensive approach of appropriate security policies, practices, and people to prevent, protect, respond to, and recover from incidents helps deter cyber sabotage.

Facilities determined to be high-risk under the CFATS program are required to implement security measures to satisfy 18 risk-based performance standards (RBPS). RBPS 8 – Cyber – requires facilities to implement appropriate cybersecurity measures to prevent unauthorized onsite or remote access to critical cyber systems. Facilities detail their cybersecurity measures in their site security plans. Many facilities utilize cyber systems that if attacked could cause a release of COI or assist in a theft or diversion of COI. These systems may include control systems, inventory management systems, business systems which manage the ordering and/or shipping COI, physical security systems such as cameras, alarms, and access control systems.

In evaluating RBPS 8, DHS first determines what types of systems the facility has in place that could affect the security of the COI. Based on this determination, DHS requires different levels of cybersecurity measures. This include elements such as cybersecurity policies and procedures, cybersecurity training, access control procedures utilizing the concept of least privilege, password management, system boundaries, network monitoring, personnel security, virus protections, business continuity and disaster recovery, lifecycle management, audits, and incident reporting and response. DHS inspects facilities to ensure they have cybersecurity measures appropriate to protect their critical cyber systems and satisfy RBPS 8.

<b>Question#:</b>	7
<b>Topic:</b>	Steps
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Claire McCaskill
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** What steps has DHS taken to improve communication, coordination, and emergency response planning among the Department, federal, state, and local emergency responders, and covered facilities?

**Response:** First responders play an irreplaceable role in the safety and security of local communities, and DHS has gone to great lengths to make sure information on CFATS covered facilities in their jurisdictions is available to them both through the Department and through the facilities themselves. The Department conducts extensive outreach to educate State, local, fusion center and first responders on the CFATS program and to make them aware of CFATS facilities in their areas of responsibility. To guide this effort, the Department develops an annual CFATS Outreach Implementation Plan, which specifically addresses regular engagement with State and local officials to include State Emergency Response Commissions (SERCs)/Tribal Emergency Response Commissions (TERCs) and Local Emergency Response Committees (LEPCs). As part of this outreach with State, local, and tribal officials, DHS offers to share lists of CFATS-covered facilities. If the officials have lists of facilities that may fall under the CFATS regulation that can be shared with the Department, DHS offers to compare lists in order to identify potential chemical facilities of interest and create a common operating picture of facilities in the region.

The Department continues to make CFATS data available via the Infrastructure Protection (IP) Gateway Executive Order 13650 Portal. First responders and Federal, State, local, tribal, and territorial governments who have a need to know are able to view facilities in their area of responsibility. The portal is a geospatial permission based platform where CFATS data is available in a For Official Use Only (FOUO) layer and a Chemical-terrorism Vulnerability Information (CVI) layer. The FOUO access allows users to view information on a chemical facility (such as name, location, and geospatial information) within their State, county, and surrounding counties, whereas CVI access includes additional information, such as CFATS tiers. Where first responders have been reluctant to request an IP Gateway account or prefer access to the information via other means, DHS has provided electronic or hard copy lists of facilities and their chemical information to authorized individuals with a need to know.



<b>Question#:</b>	8
<b>Topic:</b>	Tiering
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Claire McCaskill
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** What steps has DHS taken to increase transparency in the CFATS tiering methodology?

**Response:** DHS strives for transparency in tiering, balancing understandable interest in the process with security considerations. While the Department aims to be transparent, we must be mindful not to create a tool for an adversary to identify and locate facilities that have the potential to create the highest consequence events.

DHS has publicly shared many details of the tiering methodology and continues to provide many opportunities for facilities to understand their tier. DHS worked with industry in the development of all elements of the current methodology, to include the data that facilities submit to allow DHS to assess their risk. DHS published a fact sheet on tiering that describes every element the Department considers in assessing facility risk. In addition to this effort, DHS streamlined the surveys that facilities submit and improved the user interface. DHS only collects the information needed to make the risk determination; the elements collected in the Top-Screen are the specific data points that are used for assessing a facility's risk.

DHS assesses each facility on a case-by-case basis using the data that that facility submits. As each facility is assessed based on its specific information, the values used for each facility's risk score are unique to that facility. If after reviewing the available tiering resources a facility has questions about its risk determination, DHS meets (in-person or via phone) with a facility/company to discuss its individual risk determination and its unique elements (e.g. population, location, chemical quantities).

DHS has conducted extensive outreach to ensure facilities understand the rationale behind their tier. Engagement efforts included eight in-person presentations across the country to demonstrate the tools and explain how risk is determined for each of the various security issues. DHS also hosted two webinars that discussed how risk determinations are made and what the main drivers of tiering changes were from the previous tiering engine to the enhanced tiering engine. Invitations to the webinars were provided to all registered facility representatives. This presentation remains available online through the CFATS Knowledge Center. The Department also briefed the tiering methodology at numerous industry conferences and via a number of webinars hosted by industry associations. Further, DHS discussed the tiering methodology at the 2017 Chemical Sector Security Summit, held in Houston, TX, with approximately 500 attendees. The Department continues to discuss the tiering methodology publicly, including at the 2018 DHSChemSecurityTalks the Department is hosting this summer.

<b>Question#:</b>	8
<b>Topic:</b>	Tiering
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Claire McCaskill
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

Attendees at the DHSChemSecurityTalks are also being given the opportunity to make an appointment to talk with a CFATS representative one-on-one about the specifics of their facility's tiering.

Finally, if a facility is considering making a change to its operations, DHS has and will continue to discuss with facilities how these changes could impact (increase or decrease) its risk. This includes working with companies that are considering new facilities or bringing in new chemicals to an existing facility.

<b>Question#:</b>	9
<b>Topic:</b>	System
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Claire McCaskill
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** What steps is DHS taking to increase the automation of and access to the scientific and mathematical formulas underpinning its threat modeling system?

**Response:** DHS has taken many steps to increase the automation of the tiering process and achieve efficiencies. DHS's risk engine is almost fully automated. Prior to CSAT 2.0 implementation, the tiering process took over 300 days from the Top-Screen submission to tier notification. The process now takes an average of 11 days from facility submission to provide a facility a tier notification.

DHS collects the unique data points from each chemical facility of interest through the electronic Top-Screen survey, which is located within the online Chemical Security Assessment Tool (CSAT) suite of tools. This data is automatically transferred to the classified risk engine where the data is used to calculate vulnerability, consequence, and threat scores. The consequence value is the loss of human life. The classified threat values are informed by the intelligence community and dependent on the chemical and facility location (i.e. urban or rural). The automated risk score is a function of the vulnerability, consequence, and threat values. The tier level assigned to a facility is based on the risk score. Each tier level is associated with a classified range of risk scores. The end risk tier is manually moved from the classified system to the unclassified system, so that the tier can be sent to the respective facility through CSAT.

Other than the manual movement of the risk tier from the classified system to the unclassified system, the only other manual portion of tiering is a DHS eyes-on review of the data the facility enters in the Top-Screen. To help prevent incorrect risk determinations, the Department provides a human review of the data elements provided by a facility to make sure the data elements make sense for the type of facility and chemical reported by a facility. When potential errors are noted, a facility is contacted and, when appropriate, a facility submits a corrected Top-Screen.<sup>1</sup>

DHS strives for transparency in tiering, balancing understandable interest in the process with security considerations. While we aim to be transparent, we must be mindful not to create a tool for an adversary to identify and locate facilities that have the potential to create the highest consequence events. DHS has publicly shared many details of the

<sup>1</sup> DHS also retains the authority to apply additional reviews by our subject matter experts to tiering results, to account for unique circumstances if necessary, although exercising this authority is not part of our tiering methodology or standard business process.

<b>Question#:</b>	9
<b>Topic:</b>	System
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Claire McCaskill
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

tiering methodology and has provided and continues to provide many opportunities for facilities to understand their tier. DHS worked with experts from academia, government, and industry in the development of all elements of the current methodology.

DHS has been speaking publically about the methodology since 2016. The discussions took place at many engagements, to include the annual Chemical Sector Security Summits, eight tiering roll-out events across the country in Fiscal Year 2017, numerous industry stakeholder conferences, and multiple webinars. The remarks at these events specifically discuss the threat variable, which is informed by the intelligence community and derived from DHS's Science and Technology's Chemical Threat Risk Assessment (CTRA).

In addition to providing details on the threat score, the Department has also shared details on how vulnerability and consequence are calculated and the data points necessary for those elements. Since each risk score is unique to each chemical facility of interest, the Department continues to hold one-on-one consultations to discuss how each element impacted the facility's overall risk score and tier. DHS has and will continue to work to ensure that facilities understand the rationale behind their specific tier.

<b>Question#:</b>	10
<b>Topic:</b>	Leverage
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Claire McCaskill
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** How does CFATS currently leverage industry stewardship programs, and how could these programs be further leveraged in the future?

**Response:** The Department applauds the efforts of the chemical industry to improve the safety and security of chemical facilities through industry stewardship program. CFATS covers only the highest-risk chemical facilities, and the substantial majority of facilities that report chemicals of interest to the Department are determined to not be high-risk and consequently are not covered by CFATS. The chemical industry's voluntary efforts to secure these facilities is therefore an important effort towards safeguarding our nation's chemicals. DHS provides and promotes numerous security resources that the chemical industry can use on a voluntary basis to secure their facilities. We are always interested in partnering with industry members to improve these resources and to promote security solutions that increase the resiliency of our nation's chemical industry and the safety and security of our communities.

Under CFATS, DHS allows high-risk facilities to submit Alternative Security Programs (ASP) in lieu of Site Security Plans (SSP) to allow a tailored approach to meeting the 18 risk-based performance standards. Some industry associations have developed ASP templates that take credit for and identify measures used in stewardship programs. Other facilities have leveraged existing security or safety plans by updating them to account for CFATS requirements. DHS welcomes other ideas, to include suggestions for incentives, on how industry stewardship programs can best be used to improve security at chemical facilities. The Department is also open to exploring whether industry stewardship programs can be leveraged at CFATS covered facilities but encourages careful study of any proposals that would reduce the frequency of reporting or regulatory inspections to determine if the proposed incentive could be offered without compromising security or impeding the current flexibility of the CFATS program.

If DHS does offer incentives to high-risk facilities for participation in an industry stewardship program, there should be a clear correlation between the security value created by participation in the stewardship program and the scope of benefits available to a facility or company for such participation. For example, given the anti-terrorism focus of CFATS, regulatory incentives may be appropriate for participation in stewardship programs that require a security posture very similar to that currently required of covered facilities under CFATS but should not apply to stewardship programs focused mostly on safety and little on security.

<b>Question#:</b>	11
<b>Topic:</b>	Programs
<b>Hearing:</b>	Examining the Chemical Facility Anti-Terrorism Standards Program
<b>Primary:</b>	The Honorable Claire McCaskill
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** Does DHS have any reservations about incorporating aspects of stewardship programs into CFATS that prevented the Department from taking such actions earlier? If yes, please discuss.

**Response:** The CFATS program has made great strides over the last four years, and with the implementation of the enhanced tiering methodology and completion of the backlog of security plans has entered a steady state of operations. This presents us with an opportunity to begin studying ways to enhance our program. The Department recommends careful study of any proposals to incorporate aspects of stewardship programs into CFATS to ensure that such a program does not compromise security, limit the Department's ability to ensure that facilities are meeting their obligations under CFATS, or impede the current flexibility of the CFATS regulation. In the past, DHS has worked with industry associations, upon request, as they developed Alternative Security Program templates.